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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 73-514

PRINCE GEORGE'S COUNTY, MARYLAND,

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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PRINCE GEORGE'S COUNTY, MARYLAND,

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

The undersigned attorneys, on behalf of Prince George's County, Maryland, the county government of said County, appellant below in Case No. 269, September Term, 1972, of the Court of Appeals of Maryland, petition for a writ of certiorari to review the final judgment and decision of the Court of Appeals of Maryland in said case.

OPINION BELOW

The opinion of the Court of Appeals, together with the attachment thereto, was filed on June 5, 1973. It is reported in 306 Atl. 2nd 223 (advance volume issued on August 11, 1973), and is reprinted herein as Appendix A.

JURISDICTION

A Motion for Reargument was denied on July 2, 1973. The final judgment of the Court of Appeals of Maryland, as evidenced by its Mandate, was entered on July 5, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

QUESTION PRESENTED

Whether the Court of Appeals of Maryland erred in failing to conclude that an arbitrary, invidious, and discriminatory classification of the citizens and voters of Prince George's County without rational foundation has arisen, in violation of the Equal Protection Clause, by virtue of certain state laws which the Court has construed as affording to those citizens and voters of other Maryland counties who adopt home rule county charters the right of direct enactment therein of county rules, regulations, and procedures relative to planning and zoning, while depriving citizens and voters of Prince George's County of a similar element of direct elective franchise through local initiative and referendum.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The relevant portion of the Maryland Express Powers Act provides:

[2B Annotated Code of Maryland,
1957 Ed., 1973 Repl. Vol.]

"Sec. 1. The inhabitants of any county adopting a charter or form of government under the provisions of Article XI-A of the Constitution of the State by virtue of such adoption shall have perpetual succession . . . and may pass and adopt all ordinances, resolutions or bylaws necessary or proper to exercise the powers herein granted . . . . (p. 517)

* * * *

Sec. 5. The following enumerated express powers are hereby granted to and conferred upon any county or counties which shall hereafter form a charter under the provisions of said Article XI-A of the Constitution, that is to say: . . . . (p. 519)

* * * *

(X) *Planning and Zoning.* To enact local laws, for the protection and promotion of public safety, health, morals, and welfare, relating to planning and zoning." (p. 525)

Section 2 of Chapter 614, Laws of Maryland, 1959, which enacted Article 25A, subsection 5(X), provides:

"And be it further enacted, that insofar as the provisions of this subsection may be inconsistent with or contrary to the provisions of the Maryland-Washington Regional District Act, as enacted by Chapter 992 of the Acts of 1943 and any amendments thereto, the

provisions of this subsection shall have no application so long as such District Act is in force and effect and nothing contained herein shall be deemed or construed to affect the validity, or operative effect, of said Chapter 992 of the Acts of 1943, as amended, which established city and regional planning in Montgomery and Prince George's Counties within the limits of the Maryland-Washington Regional District as said district is now or shall hereafter be defined by law."

The relevant portions of the Maryland-Washington Regional District Act provide:

[Sections 59-80 and 59-83, Code of Public Local Laws of Prince George's County, Maryland, Enacted as Chapter 780, Laws of Maryland, 1959, and Chapter 711, Laws of Maryland, 1969, as amended, and Chapter 588, Laws of Maryland, 1972]

"(a) The County Councils of Montgomery County and Prince George's County are each individually designated, for purposes of this article, as the District Council for that portion of the Regional District lying within each county, respectively.

* * * *

(b) Each District Council is respectively empowered, in accordance with the conditions and procedures specified in this article of this chapter to regulate by ordinance, in the portion of the Regional

District lying within its county, (1) the location, height, bulk, and size of buildings, other structures, and units therein, building lines, minimum frontages, depths and areas of lots which may be occupied; (2) the size of lots, yards, courts, and other open spaces; (3) the erection of temporary stands and structures; (4) the density and distribution of population; (5) the location and uses of buildings and structures and units therein for trade, industry, residence, recreation, agriculture, public activities, and other purposes; and (6) the uses of land, including surface, subsurface, and air rights therein, for building, trade, industry, residence, recreation, agriculture, forestry, or other purposes."

* * * *

"After duly advertised public hearing each district council may from time to time amend its regulations or any regulation, including the maps or any map, in accordance with such procedures as may be established in the respective zoning ordinances. Such procedures and ordinances may include, but shall not be limited to: procedures limiting the times during which amendments may be adopted; provisions for hearing and preliminary determinations by an examiner, board or other agency; procedures for quorums, number of votes required to enact amendments and variations or increases therein based upon such factors as master plans, recommendations of the hearing examiner, planning board, municipality or other body, and petitions

of abutting property owners, and the evidentiary value which may be accorded to all of these; and procedures for hearing, notice, costs, and fees, amendment of applications, stenographic records, reverter, lapse, and consideration *de novo* of undeveloped zoning amendments. The existing provisions of the Regional District Law and of the ordinances heretofore enacted by the respective district councils relating to the aforegoing matters shall remain in full force and effect unless or until specifically superseded or amended in accordance with the power and authority granted herein . . . ."

Also relevant are the provisions of the Maryland Home Rule Amendment (Article XI-A, Sec. 1 and 4, Constitution), and those provisions of the Charters of Prince George's County, Harford County, Baltimore County, Anne Arundel County, Howard County, and Baltimore City relating to planning and zoning. They are set forth herein in the Appendices C through I.

STATEMENT OF THE CASE

1. **Prince George's County voters adopt a Home Rule Charter pursuant to the Maryland Constitution.**

On November 3, 1970, the voters of Prince George's County, Maryland, by a vote of 68,495 to 36,208, adopted a county charter pursuant to the provisions of the Home Rule Amendment to the Maryland Constitution. (Art. XI-A, Sec. 1, Maryland Constitution, Appendix C). In so doing, the voters of Prince George's County had complied with the State constitutional procedure. This first required the collection of 10,000 signatures on a petition

for a referendum on the question of whether to hold an election to create a charter-writing board, the approval of this question by the voters in a referendum, the election by the voters of a five-man charter board, the writing of a proposed organic act or county charter equivalent to a city or municipal charter, and the ultimate approval by the voters of the provisions of this charter in a second referendum.

2. **The effect of the Prince George's County voters' adoption of their charter.**

Adoption of the Prince George's County Charter by the voters of the County resulted in replacement of a County government operated by a five-member board of county commissioners, who exercised limited local administrative and ordinance-making powers, with a county government providing for a county executive and an eleven-member county council. Pursuant to grants of express powers delegated to the voters in all chartered counties of the State by the General Assembly, the new government was empowered to enact at the County level local laws applicable to Prince George's County alone, which were previously enacted by the Maryland General Assembly. (Express Powers Act, Art. 25-A, Annotated Code of Maryland). Thereby, Prince George's County and its residents were entitled to enjoy freedom from interference by the General Assembly in the exercise of their local legislative powers (Art. XI-A, Sec. 4, Maryland Constitution). Enacted by the voters as a part of the Prince George's County Charter was Article VII (Appendix D). This section comprehensively set forth in the body of the charter the local planning and zoning functions of the new government. It also placed certain restrictions and requirements upon public officials of the new government in the exercise of these functions.

3. The Planning Commission seeks to enjoin the County and also requests a declaratory judgment as to the validity of the Charter's planning and zoning provisions.

The Maryland-National Capital Park and Planning Commission (herein called the Commission) is a ten-member commission, comprised of two five-member county planning boards. It was created by the General Assembly as an agency designed to assist these county governments, however constituted, in the performance of their respective planning and zoning functions. The Commission exists by virtue of an act of the General Assembly, the Maryland-Washington Regional District Act,[1] whose statutory antecedents reach back to 1927. On May 6, 1971, some six months after the voters' adoption of the Prince George's County Charter and about three months after the Charter's effective date, the Commission filed the instant action in equity against the new County government, the petitioner before this Court, in the Circuit Court for Prince George's County, seeking an injunction and a declaratory judgment. In its eighty-three page bill of complaint, the Commission sought, *inter alia*, a declaration and decree against the Defendant, petitioner herein, nullifying Article VII of the Charter relating to planning and zoning, claiming that its provisions were unconstitutional or at least inoperative. The Commission, which is appointed and financed by the county governments of Prince George's and Montgomery Counties, also sought a judicial declaration exempting it, and the Prince George's County Planning Board which, in part, composes it, from any of the budgetary or administrative provisions contained in the County Charter.

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[1] Chapter 780, Laws of Maryland, 1959, as amended.

4. **The Chancellor's decree.**

The Chancellor issued a declaratory order largely as prayed in the bill of complaint. He declared the planning and zoning provisions of the County Charter inoperative within the territorial confines of Prince George's County. He deemed the provisions of the Maryland-Washington Regional District Act, from which the Commission derives its existence and functions, totally preemptive of the County Charter and completely exclusionary of the home rule powers of planning and zoning delegated generally to the voters in chartered counties by the General Assembly pursuant to Article XI-A of the Maryland Constitution. However, the Chancellor did not find any specific provision of the County Charter in conflict with any specific provision of the Maryland-Washington Regional District Act.

According to the Chancellor, the Prince George's County Council does not act in its capacity as the County Council of Prince George's County under the Express Powers Act, in approving master plans, enacting zoning ordinance texts, and zoning and rezoning specific parcels of land within the Prince George's County. It wears "another hat" and acts in the capacity of a District Council of that portion of the Maryland-Washington Regional District which lies within Prince George's County, thereby exercising planning and zoning powers over a territory largely identical to the County[2] namely, a portion of a special bi-county planning district comprising of Prince George's and Montgomery

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[2] The City of Laurel, Maryland, while lying within Prince George's County, is not within the Maryland-Washington Regional Distict. It exercises planning and zoning powers within its approximately five-square miles of area.

Counties created by the General Assembly apart from the regularly constituted county governments.

By decreeing that the directly legislated rules, regulations, and restrictions contained in Article VII of the County charter relative to planning and zoning were inoperative within that portion of the Maryland-Washington Regional District which lies within Prince George's County, the Chancellor decreed, in effect, that these provisions were inapplicable to all planning and zoning matters arising within the territorial confines of Prince George's County. It followed that, while certain County officials whose positions were established by the Charter might continue to exercise planning and zoning functions as members of the District Council, they were free to ignore the directly-legislated restrictions on their powers which the Charter contains. The Maryland-Washington Regional District Act does not provide for popular initiative and referendum, either on a county or bi-county basis, although the Prince George's County Charter and the State Constitution relative to chartered counties so provide. Here the Chancellor's ruling served to deprive Prince George's County's residents and voters of any direct elective legislative control over matters of planning and zoning by popular initiative and referendum.

5. **The Court of Appeals' ruling.**

The Maryland Court of Appeals sustained the Chancellor's ruling. After reversing a previous decision which applied a zoning provision of the Prince George's County in determining a litigated case, it declared that the provisions

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3 *Dal Maso v. Prince George's County*, 264 Md. 691, 288 A.2d 119 (1972).

of Article VII of the Prince George's County Charter, while not illegal, were "inoperative." Petitioner had argued extensively to the Chancellor in the Circuit Court that his ruling deprived the citizens and voters of the County of the equal protection of the laws, as guaranteed by the Fourteenth Amendment, in that they were effectively precluded from exercising direct elective input, through the initiative and referendum, in crucial matters involving planning and zoning, while voters of other Maryland chartered counties were so entitled. Petitioners also argued that there was no rational foundation for such an invidious and discriminatory classification. The same argument was made to the Court of Appeals by brief and oral argument, and was renewed in a post-decision Motion for Reargument and Reconsideration. The Court of Appeals did not address the question either in its opinion (Appendix A) or in its order denying the petitioner's Motion for Reargument and Reconsideration.

It should be borne in mind that the Maryland Court of Appeals takes a narrow view of the scope and applicability of the Equal Protection Clause. In another recent Prince George's County zoning decision, filed April 4, 1973, the Court renewed an earlier holding on this question as follows:

> "Except where discrimination on the basis of race or nationality is shown, few police power regulations have been found unconstitutional on the ground of denial or equal protection, which may be what prompted the Supreme Court to call the equal protection clause the 'usual last resort of constitutional

arguments.' (citing *Buck v. Bell*, 274 U.S. 200, 208, 47 S.Ct. 584, 71 L.Ed. 1000)"[4]

REASONS FOR GRANTING THE WRIT

The issue posed in this case is of abiding importance to the nearly 700,000 people who now reside in Prince George's County, Maryland. It necessarily has an equivalent, if more indirect, impact on the lives and property of the nearly 600,000 people who now reside in Montgomery County, Maryland, which comprises the other portion of the Maryland-Washington Regional District. Resolution of this issue is not dependent upon any factual determination but is justiciable on the basis of consideration of statutes and county charters cognizable under Maryland law by judicial notice (Art. 35, Sec. 66A, Anno. Code of Maryland).[5]

The right of direct popular control of, and influence upon, the sensitive processes of local planning and zoning, often pressed in the face of inept, unresponsive, and sometimes corrupt officialdom,[6] is necessarily of immediate concern to residents of all burgeoning suburban areas facing

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[4] *Prince George's County v. McBride*, 302 A.2d 300, at 302, in its earlier opinion quoting *Allied American Company v. Commissioners*, 219 Md. 607, 623, 150 A.2d 421, 431 (1959).

[5] See Appendices C, D, E, F, G, and H.

[6] See *United States v. Rocks*, 339 F. Supp. 249, affirmed by the Fourth Circuit on June 14, 1973. (Case No. 72-1862). *United States v. Baggett*, conviction affirmed by the Fourth Circuit on June 19, 1972. (Case No. 72-1548). In these companion cases, a developer of land in Prince George's County and a former member of

(continued)

problems of orderly growth similar to those found in Prince George's County. The existence *vel non* of such control affects residents of the older areas of central cities as well. Governmental responsiveness in planning and zoning to the needs and desires of affected citizens, as well as the welfare of the larger community outside the immediate area of a zoning controversy, lies at the heart of orderly urban and suburban development in the United States.

Between 1960 and 1970, Prince George's County, Maryland, the largest suburban region in the Washington, D.C., area, experienced a population growth from 357,395 to 660,567, a fact which gave it the dubious distinction of being the fastest growing county in the United States and Maryland's largest county. This increase in a ten-year span, coming at an average rate of 580 persons each week, was helped along by lax administration of planning and zoning functions by a board of county commissioners who acted as a district council under the provisions of the Maryland-Washington Regional District Act. Widespread popular dissatisfaction arose over a system which easily accommodated what this Court, in another Prince George's County case, called zoning "favors."[7] As a result, the voters of the County, using the processes of the initiative and referendum, adopted a home rule charter which prescribed therein a number of substantive zoning reforms. These provisions, which they enacted by direct popular legislation, allocated

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[6] (continued) Board of County Commissioners were convicted for violating the provisions of the Travel Act (18 U.S.C. 1952 and 18 U.S.C. 2) for, respectively, giving and receiving a bribe affecting a zoning decision in Prince George's County.

[7] *Greenbelt Cooperative Publishing Association, Inc., et al. v. Bressler*, 398 US 6, at 8; 90 S. Ct. 1537 (1970).

planning and zoning responsibilities among the officers of the new government and specified strict and far-reaching substantive requirements designed to prevent the recurrence of the lax and destructive zoning practices which had marred the development of the County during the 1960's.

Included among these charter provisions were provisions for a check-and-balance on the enactment of zoning text amendments, including popular referendum by petition of zoning ordinances; similar provisons regulating the creation of master plans; hearing procedures in zoning cases designed to embody the elements of procedural due process; prohibition of piecemeal rezoning except upon written findings of fact; requirements that applicants for the rezoning of land disclose their identities and that public officials participating in zoning decisions disclose their land holdings; restraints on frequent repeated attempts to rezone the same tracts of land; requirements for augmented majorities of the district council to rezone land in violation of master plan requirements or recommendations of planning authorities; prohibition of floating zones; authorization for a hearing examiner to conduct hearings in zoning cases; creation of the Office of People's Zoning Counsel to insure the creation of a full and adequately factual record in all individual zoning cases, whether or not applications were otherwise opposed by individual protestants; and many other matters designed to insure the fairness and regularity of the zoning process from abuse by government officials or by anyone else.

In the decision below, the Maryland Court of Appeals held that the creation of a special purpose planning district, in effect, permitted elected county officials, who, as members of the newly established County Council, owe their office to the adoption by the voters of a county

charter, to exercise planning and zoning responsibilities wholly unaffected by the popularly-enacted restraints upon their official actions contained in the same charter. In so holding, the Court stripped from the Charter, and therefore from the County's voters and residents, the protections directly placed there by voters of Prince George's County through the direct exercise of this franchise, while leaving citizens and voters elsewhere in Maryland free to do by direct elective franchise what Prince Georgians may not.[8] In so holding, the Maryland Court of Appeals articulated no rational basis for this deprivation and arbitrary classification of Prince George's County voters, and none has been suggested by the Commission at any point in the litigation. Hence, the question posed herein is not one of equality between counties *qua* counties, addressed by this Court in *Salzburg v. State of Maryland*, 346 U.S. 545, 74 S. Ct. 280 (1954). It is a question intimately involving equal effectiveness and availability of the franchise to citizens of all the various subdivisions of the State, and thus is a matter of federal constitutional concern.

The decision below invokes a result obnoxious to the democratic process and injurious to the effectiveness of planning and zoning as an element of environmental protection and fiscal soundness. It is deleterious to the creation and administration of sound and effective government at the local level, and is unequal and inequitable to the degree that it offends the federal constitutional requirement of equal protection of the laws, because it is wholly unsupported by any rational foundation.

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[8] See, for example, the opinion of the Maryland Court of Appeals in *Turf Valley Associates v. Board of Zoning Appeals of Howard County, Maryland*, 262 Md. 632, 278 A.2d. 574 (1971).

CONCLUSION

In light of these considerations, the undersigned pray that a writ of certiorari to the Court of Appeals of Maryland be granted, and that the decision of that Court in this case be reviewed here.

Respectfully submitted,

WALTER H. MALONEY, JR.
JAMES F. SHARKEY
Attorneys for the Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this ____day of September, 1973, three (3) copies of the Petition for Writ of Certiorari were mailed to Robert E. Levan, Esquire, 6600 Kenilworth Avenue, Riverdale, Maryland 20840, Sanford E. Wool, Esquire, 6600 Kenilworth Avenue, Riverdale, Maryland 20840 and Harry W. Lerch, 8787 Georgia Avenue, Silver Spring, Maryland 20907.

I further certify that all parties required to be served have been served.

WALTER H. MALONEY, JR.
4305 Josephine Avenue
Beltsville, Maryland
Attorney for Petitioner

319;[1] it simply remains in force, despite the filing of a petition signed by 10,000 qualified voters, and its effectiveness persists until 30 days after it has been rejected by a majority of the qualified voters of the county voting thereon, should it be so rejected. While this question was dealt with only obliquely in the opinion of the court below, and not at all in the order which was entered on 13 December 1972, we are satisfied that the order should have declared that the complainants were entitled to petition County Bill 160-72 to referendum, and should be so modified.

Order of 13 December 1972 modified, and as modified, affirmed; decree of 16 December 1972 affirmed; costs to be paid one-half by appellants and one-half by appellees.

PRINCE GEORGE'S COUNTY, Maryland

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION.

No. 268.

Court of Appeals of Maryland.

June 5, 1973.

Action by Maryland-National Capital Park and Planning Commission against Prince George's County for declaratory and injunctive relief. The Circuit Court for Prince George's County, Perry G. Bowen, Jr., J., entered judgment from which county appealed. The Court of Appeals, Barnes, J., held that the Commission had standing to sue, that confrontations between the Commission and county produced justiciable issues ripe for resolution by declaratory judgment, and that Regional District Act of 1959, which continued Maryland-National Capital Park and Planning Commission and expanded areas under its jurisdiction and redesignated its functions under subheadings "metropolitan district" and "regional district," was a public general law rather than a public local law, and thus not subject to amendment nor to be superseded in part by Prince George's County Charter.

Affirmed.

1. Declaratory Judgment ⇐=388

Maryland-National Capital Park and Planning Commission had standing to maintain suit against Prince George's County for declaratory relief with respect to controversies between the Commission and the county which went to heart of ability of the Commission to carry out the Regional District Act. Acts 1959, c. 780, §§ 7, 11 as amended, 16, 17, 56-99, 57(d)(3) as amended, 57(E)(4) as amended; Code 1957, art. 31A, § 6.

2. Injunction ⇐=136(7)

In view of confrontation between county executive and Maryland-National Capital Park and Planning Commission in regard to park and planning functions and recreational activities, a temporary injunction was warranted to prevent, pendente lite, grave injury to the Commission's park and planning functions and recreational activities by county budget originally proposed by county executive. Acts 1959, c. 780 as amended.

3. Declaratory Judgment ⇐=294, 299

Confrontations between Maryland-National Capital Park and Planning Commission and Prince George's County in regard to whether county charter controlled various functions and personnel of the Commission, in regard to whether Regional Dis-

1. It is clear from the record that the transfer was not from the County's current expense budget, Charter § 807, but from the Capital budget, § 806 and was therefore not insulated from referendum by § 319(2).

trict Act was a public general law and, as such, could not be superseded by the charter, in regard to the Commission's power to acquire land, in regard to effort of county executive to consolidate the Commission's legal department with county attorney's office, and in regard to the Commission's mandatory and discretionary park taxes within both metropolitan district and regional district produced justiciable issues ripe for resolution by declaratory judgment. Acts 1959, c. 780, 780 as amended, §§ 11, 16, 17, 56-99, 57(d)(3) as amended, 57(E)(4) as amended; Acts 1970, c. 732; Code 1957, arts. 25A, § 5(V), 31A, § 6.

4. Statutes ⇐88

Regional District Act of 1959, which continued Maryland-National Capital Park and Planning Commission and expanded areas under its jurisdiction and redesignated its functions under subheadings "metropolitan district" and "regional district," was a public general law rather than a public local law, and thus not subject to amendment nor to be superseded in part by Prince George's County Charter. Acts 1959, c. 780 as amended; Const. art. 11-A, §§ 3, 4.

5. Statutes ⇐77(1)

Fact that a public general law permits or directs differences in matters of mere administrative detail suited to particular needs of localities does not make it any less a public general law. Acts 1959, c. 780 as amended; Const. art. 11-A, §§ 3, 4.

6. Zoning ⇐14

In view of Express Powers Act, provisions of Prince George's County Charter in regard to planning and zoning did not supersede or amend inconsistent provisions under the Regional District Act. Acts 1959, c. 780 as amended, c. 614, § 2; Code 1957, art. 25A, § 5(X); Const. art. 11-A, § 1 et seq.

7. Counties ⇐3

Provisions of county charter are presumed to be valid.

8. Counties ⇐3

Prince George's County Charter is not applicable to Planning Board of Maryland-National Capital Park and Planning Commission. Acts 1959, c. 780 as amended; c. 614, § 2; Code 1957, art. 25A, § 5(X).

9. Zoning ⇐7

Chapter 471 of Laws of 1968, a public general law granting certain zoning powers to a district council within regional district, was not repealed by Chapter 711 of Acts of 1969 which provides in part that both districts and zones may be created and that all such regulations shall be uniform for each class or kind of building throughout any district or zone, but that regulations in one district or zone may differ from those in any other district or zone. Acts 1968, c. 471; 1969, c. 711; Maryland Rules, Rule 885.

10. Zoning ⇐3

Provision of Prince George's County Charter in regard to conditional zoning is inapplicable to power granted by public general law granting certain zoning powers to a district council within regional district. Acts 1959, c. 780 as amended; 1968, c. 471; 1969, c. 711.

11. Statutes ⇐88

Public general law granting certain zoning powers to a district council within regional district is not converted into a public local law merely because its impact is upon that portion of regional district lying within Prince George's County. Acts 1959, c. 780 as amended; 1968, c. 471; 1969, c. 711.

12. Statutes ⇐88

Regional District Act, a public general law, provides for local functions and imposes local responsibilities, but such provisions do not change statute from a public general law to public local law, and make planning boards subject to Prince George's County Charter and local regulations. Acts 1959, c. 780 as amended.

13. Taxation ⇐444

Provision of Regional District Act requiring county to levy ad valorem taxes against real property in those portions of regional district and metropolitan district lying within Prince George's County is not unconstitutional as violating declaration of rights of Maryland Constitution requiring uniformity within a taxing district. Acts 1959, c. 780 as amended; Const. Declaration of Rights, art. 15.

14. Counties ⇐190(2)

Maryland-National Capital Park and Planning Commission and its county planning board are not "agencies" which receive or disburse county funds, so that levying of ad valorem taxes for the Commission and planning board are not subject to limitations contained in Prince George's County Charter. Acts 1959, c. 780, as amended; Const. Declaration of Rights, art. 15.

See publication Words and Phrases for other judicial constructions and definitions.

15. Statutes ⇐88

Statute which charges planning board of the Maryland-National Capital Park and Planning Commission with responsibility of providing an adequate and balanced program of recreation to serve varied needs and interests of several age groups among residents of Prince George's County and to coordinate such program with the Commission's park functions is a public general law and is not subject to amendment or repeal by schedule of legislation appended to Prince George's County Charter. Acts 1970, c. 732.

16. Counties ⇐3

Sections of Prince George's County Charter relating to conflict of interests and forbidding official lobbying without sanction of county executives do not apply to members of county planning board of Maryland-National Capital Park and Planning Commission. Acts 1959, c. 780 as amended.

James F. Sharkey, Associate County Atty. (Walter H. Maloney, Jr., County Atty., Upper Marlboro, on the brief), for appellant.

Sanford E. Wool, Deputy Gen. Counsel and Harry W. Lerch, Silver Spring (Robert H. Levan, Gen. Counsel, Silver Spring, on the brief), for appellee.

Argued before MURPHY, C. J., and BARNES, SINGLEY, SMITH, DIGGES and LEVINE, JJ.

BARNES, Judge.

In this appeal from a declaratory decree of October 2, 1972, of the Circuit Court for Prince George's County, in Equity, (Bowen, J.)—filed October 3, 1972—three determinative questions are presented to us for decision, *i. e.*, did the chancellor err (I) in holding that the Maryland-National Capital Park and Planning Commission, appellee (the Commission), had standing to sue; (II) in holding that there was a justiciable issue ripe for a declaratory decree; and, (III) in holding that Chapter 780 of the Laws of Maryland of 1959, as amended (the Regional District Act), was a public general law rather than a public local law, and thus not subject to amendment nor to be superseded in part by the Prince George's County Charter.

The Commission filed its suit against the appellant, Prince George's County, in the Circuit Court for Prince George's County on May 5, 1971, seeking declaratory and injunctive relief. The chancellor on June 7, 1971, after a hearing, issued a preliminary injunction enjoining the County from interfering with the activities of the Commission, protecting the Commission's budget and tax revenues and maintaining the *status quo* of the parties, pending the final determination of the issues and controversies involved in the litigation. Trial was held by the chancellor on March 27, 1972. The chancellor, after finding that the Commission had standing and that justiciable issues were presented ripe for controversy,

passed a final decree, dated October 2, 1972, in which he held the Regional District Act to be a public general law and made a number of declarations. The full text of the final decree is set out in an Appendix filed with this opinion. From this final decree, the County perfected a timely appeal to this Court.

The General Assembly originally created the Commission by Chapter 448 of the Laws of 1927 (Chapter 448). By this extensive statute, the Commission administered certain park development, planning and zoning functions within those portions of Prince George's and Montgomery Counties adjoining the District of Columbia. Designated as the Maryland-Washington *Metropolitan* District (Metropolitan District), this original area was roughly located between the District of Columbia and what is now the Capital Beltway. The Commission was given the power to sue and be sued, issue bonds, implement land use and subdivision regulations and generally effectuate the purpose of Chapter 448 which was the "coordinated, comprehensive, adjusted, systematic and harmonious development of the [Metropolitan] District." Exclusive power over planning and zoning was vested in the Commission and the Boards of County Commissioners of the two counties.

Chapter 714 of the Laws of 1939 created the Maryland-Washington *Regional* District (Regional District) under the jurisdiction of the Commission. The Regional District included basically the Metropolitan District with some additions. Under this Chapter, the Commission's "park and planning functions in the district were separated, and the Maryland-Washington Regional District . . . was created as the planning and zoning district." Prince George's Co. v. Laurel, 262 Md. 171, 174, 277 A.2d 262, 264 (1971).

In 1943, the General Assembly by Chapter 992 repealed Chapter 714 and re-enacted it "with amendments as a bi-county act applicable to the Maryland-Washington Regional District in Montgomery and Prince George's Counties and not as a public local law of either county . . . ." Likewise, in 1943, the General Assembly indicated its intent to clarify the status of the law pertaining to the Metropolitan District by enacting Chapter 1008 "as a single bi-county Act . . . and not as a public local law or laws of either county."

In 1959, the General Assembly consolidated all of the provisions relating to the Commission by enacting Chapter 780 of the Laws of Maryland. It repealed certain sections of the Codes of Montgomery and Prince George's Counties pertaining to the Commission, repealed all earlier Chapters (discussed above) and enacted in lieu thereof a new subtitle "Park and Planning Commission." The law basically continued the Commission, expanded the areas under its jurisdiction and redesignated its functions under the subheadings "Metropolitan District" and "Regional District." It is the Regional District Act which is in controversy here.

Under Chapter 780, the Commission was to consist of ten members—five from each county. Section 11 provides:

> "The Commission has the right to exercise all powers and functions granted to it in this Article. It has the right to use a common seal, *to sue and be sued, and to do any and all other corporate acts for the purpose of carrying out the provisions of this Article.*" (Emphasis supplied)

In regard to budgetary matters, Section 16 provides:

> "None of the provisions of any public general law governing the preparation and filing of budgets by agencies of the State of Maryland shall be applicable to the budgetary procedure of the Commission. The budget programs and procedures heretofore followed by the Commission are ratified and confirmed and approved for use by the Commission hereafter, together with such improvements therein as in the discretion of the

Commission shall be deemed necessary or appropriate in the public interest. . . ."

Section 17 provides:

"The term 'municipal corporation' in Article 11E of the Constitution of Maryland does not embrace or include the Commission or the Maryland-Washington Metropolitan District or the Maryland-Washington Regional District. The Commission and the Metropolitan District and the Regional District cannot be classified in any group of municipal corporations as required by Article 11E, and Article 11E [has] no application to the Commission or to the Metropolitan District or to the Regional District."

Sections 56-99 pertain to the Regional District as originally created by Chapter 714 and continued by Chapter 992. The entire area of Montgomery County was placed within the Regional District, subject to certain provisions relating to municipalities. Section 57(E) included additional areas of Prince George's County within the District and provided in paragraph (4) that:

"No municipal corporation within the areas added . . . shall be authorized, by means of an amendment to its charter or otherwise to exercise any of the powers relating to planning, subdivision control and/or zoning now or hereafter granted by the said Maryland-Washington Regional District Act to the Maryland-National Capital Park and Planning Commission or the County Commissioners of Prince George's County. . . ."

A similar provision in Section 57(d)(3) applies to municipal corporations in Montgomery County.

I.

[1] We are of the opinion that the chancellor correctly ruled that the Commission had standing to maintain the suit for declaratory relief. As we have already pointed out, Section 11 of Chapter 780 specifically granted the Commission the right to exercise all powers and functions granted to it by Chapter 780 and the right *"to sue and be sued,* and to do any and all other corporate acts for the purpose of carrying out the provisions of" Chapter 780. (Emphasis supplied) The appropriateness of declaratory relief is indicated by the controversies between the Commission and the County which go to the heart of the ability of the Commission to carry out the provisions of Chapter 780.

In this regard, we consider our decision in Liss v. Goodman, 224 Md. 173, 167 A.2d 123 (1961), involving the dispute between the City Council of Baltimore City and the Board of Estimates of Baltimore in regard to certain budgetary matters, to be determinative. The Board of Estimates in *Liss* contended (as does the County in the present case) that there was no "actual controversy" between the parties, no indication of "imminent and inevitable litigation" and that the members of the City Council had no "concrete interest" in the rights or privilege asserted by them, as required for declaratory relief under Code (1957) Art. 31A, § 6 of the Uniform Declaratory Judgments Act. In rejecting these contentions and in holding that declaratory relief was properly given, Judge Henderson, for the Court, aptly stated:

"This Court has stated that the declaratory procedure should not be used to decide purely theoretical questions or questions that may never arise. See Tanner v. McKeldin, 202 Md. 569, 97 A.2d 449, and Kirkwood v. Provident Savings Bank of Baltimore, 205 Md. 48, 106 A.2d 103. We have also stated that declarations should not be made where they would not serve a useful purpose or terminate a controversy. *Cf.* Staley v. Safe Deposit & Trust Co. of Baltimore, 189 Md. 447, 56 A.2d 144, and Commissioners of Cambridge v. Eastern, etc., Co., 192 Md. 333, 64 A.2d 151. We think the question here is not theoretical but practical. The

Council has asserted a right to reject or return the ordinance when submitted. To do so in the closing days of the year without a prior adjudication might well cause an impasse and seriously affect the City's financial needs and obligations. It would seem to be peculiarly appropriate to have the issue resolved in advance. Other courts have indicated that declaratory relief is appropriate where public agencies are at loggerheads. See Marshall County Gas District v. City of Albertville, 263 Ala. 601, 83 So.2d 299; Personnel Board of Mobile County v. City of Mobile, 264 Ala. 56, 84 So.2d 365 (Ala.); Alsop v. Pierce, 155 Fla. 185, 19 So.2d 799 (Fla.); Cummings v. Beeler, 189 Tenn. 151, 223 S.W.2d 913 (Tenn.); Hubbard v. Board of Trustees of Retirement System, 315 Mich. 18, 23 N.W.2d 186 (Mich.). See also Borchard, Declaratory Judgments (2d ed.), p. 889. The declaration in the instant case terminates any uncertainty caused by the assertion of its alleged rights or privileges by the Council and serves the remedial purposes set forth in Code (1957), Art. 31A, sec. 12 [providing that the 'Article is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.']." 224 Md. at 177–178, 167 A.2d at 125–126.

In the instant case, the Commission and the County are indeed "at loggerheads" and, in our opinion, declaratory relief is clearly appropriate.

II.

We are also of the opinion that a number of justiciable issues exist which are ripe for declaratory relief. The principal controversies arise from the contention by the County that the provisions of the Prince George's County Charter (including a "Schedule of Legislation" appended to it) adopted by the voters of the county and effective on February 8, 1971, (the Charter) control various functions and personnel of the Commission. The Commission contends that Chapter 780 is a public general law and, as such, cannot be amended or superseded by the Charter. We have no doubt that these respective contentions have produced justiciable issues ripe for resolution by declaratory judgment.

Although it might possibly be sufficient to find just one justiciable issue to provide declaratory relief (which would undoubtedly shorten this opinion), we will discuss all of the controversies between the parties, so that it will appear beyond peradventure that the chancellor properly granted declaratory relief upon the various declarations in the final decree.

Chapter 732 of the Laws of 1970 (Chapter 732) merged the then existing Department of Recreation of the County with the Commission and provided that the Prince George's County Planning Board *of the Commission* (the Planning Board) should "be responsible for providing an adequate and balanced program of recreation" for the county residents "and to coordinate such program with the Commission's Park functions." The Planning Board was given various powers and duties to accomplish a comprehensive program of recreation, the power to designate a director, and to employ necessary personnel to be placed under the Commission's merit system provided for in Chapter 780, and to adopt necessary rules and regulations.

The testimony indicated that after Chapter 732 became effective, employees engaged in recreational activities for the County left their positions, were transferred to the Commission, and were included in the Commission's merit system. They were integrated into the Commission's Department of Parks and the Office of Associate Director of Recreation was created. The Commission also assumed all responsibility for contracts and obligations of the County Department of Recreation. The recrea-

tional functions performed by the Commission were financed by a mandatory tax imposed upon the county real estate. This tax is required to be collected by the County and turned over to the Commission in accordance with the provisions of Chapter 732. If this tax is not collected and remitted to the Commission, it could not perform its responsibilities imposed by statute and continue to operate its recreational program or activities.

On March 29, 1971, the Chairman of the County Council sent a memorandum to the Chairman of the Commission questioning "whether the upcoming Recreational Department Budget should be included in the Park and Planning Commission's Budget or the County Budget." Robert H. Levan, General Counsel of the Commission, responded with his opinion that the Regional District Act (as amended by Chapter 732) was a public general law not subject to repeal or amendment by the Charter so that those taxes levied in accordance with the Regional District Act were to be collected by the County and transferred to the Commission to provide for the Department of Recreation.

The County Executive, William W. Gullett, on April 22, 1971, wrote the Chairman of the Commission that the County Executive was in the final stages of preparing the proposed budget for the Fiscal Year 1971–72 and requested receipt of "recommended changes" in the Commission's Park and Recreation program. The letter explained "there would not be a property tax rate increase in the ensuing year" and therefore the Park and Planning budget would have to be reduced. The letter then stated certain specific changes:

"1. That the advanced land acquisition program will not be funded by a special *ad valorem* tax, and will be undertaken under the direct control of the County government unless there have been changes in this program by the General Assembly at its most recent session.

"2. That the recreation department would be structured directly under the supervision of the County Executive, as authorized by Article 25A, Section 5(v) of the Annotated Code and Section 8 of the Schedule of Legislation attached to the Prince George's County Charter."

* * * * * *

"3. That so much of the Commission's legal staff as is funded by Prince George's County will be under the direct supervision of the County Attorney. Funds that are contained in the proposed Park and Planning budget for Prince George's County in connection with this activity will be transferred to the Office of Law.

"4. Four planning positions will be transferred to the Planning Coordinator's section of the Executive Officer's Division of Administration. As is the case with the legal personnel transfers, the Park and Planning budget will be reduced accordingly. . . ."

* * * * * *

"In the meantime, I have instructed the Administrative Officer to complete the Capital Improvement Program on the premise that the County Government will provide the funds for the park development and land acquisition program."

The letter also indicated that "discretionary taxes" under the Regional District Act would be eliminated from future budgets.

The County Executive in his budget message dated May 13, 1971, accompanying the budget for the Fiscal Year 1971–72, stated, in part:

"As a result of the adoption of the Charter, the funding and budgetary control of certain County functions became the direct responsibility of the County Government. Specifically, the budget requests of the Maryland National Capital Park and Planning Commission, Recreation, the Volunteer Fire Service and the Prince George's County Hos-

pital were subject to the approval of the County Executive. The budget submissions of the foregoing departments and agencies have been reviewed by the County Executive and are incorporated in the proposed budget document for consideration by the County Council."

Satisfied that the above confrontations presented a justiciable issue, the chancellor, on June 7, 1971, after a hearing, issued a temporary injunction restraining the County Executive, *pendente lite*, from changing the Commission's offices, agencies and functions, except as required by fiscal exigencies. The County Executive and the County Council were further ordered to levy such taxes as they deemed appropriate, necessary and proper, and to levy the mandated taxes required by Chapter 780.

In the County Executive's budget message of June 30, 1971, accompanying the approved budget for the county for the Fiscal Year 1971–72, the temporary injunction and its effect upon the approved budget was mentioned. The County Executive stated that because of the injunction, the amounts for the Commission and the Recreation Department were not included in the County Executive's proposed budget. The budget message then illustrated the adjustments made to the approved budget to restore the mandatory and discretionary taxes to the Commission for its park and planning functions and for its recreational activities.

[2] It is apparent, we think, from the confrontation between the County Executive and the Commission, in regard to park and planning functions and recreational activities, there was indeed a justiciable controversy ripe for a declaratory judgment. The controversy was so "ripe" for declaratory relief that the chancellor, in our opinion, properly issued the temporary injunction to prevent, *pendente lite*, grave injury to the Commission's park and planning functions and recreational activities by the county budget for Fiscal 1971–72 originally proposed by the County Executive.

Another issue involves legislative activities on behalf of the Commission. By the provisions of Chapter 780, the Commission was authorized and directed to report and make recommendations to the General Assembly in regard to legislation which might affect the Commission or the Metropolitan and Regional Districts. On the other hand, Section 1005 of the Charter provided that no official appointed by the County Executive or by the County Council could in his official capacity "recommend or request the passage or defeat of any legislation without the express prior approval of the County Executive or of the Council."

On March 19, 1971, the County Attorney wrote to the Chairman of the Commission that he had requested the General Counsel of the Commission to "clear with this Office any and all interpretations of the Charter or of the Regional District Act which were furnished to the Delegation [the members of the General Assembly from Prince George's County]. Such request was made pursuant to Section 1005 of the Charter, which forbids official lobbying without the sanction of the County Executive . . . ." It was further stated that the General Counsel for the Commission, at the direction of the Prince George's County Planning Board, had indicated that he would not comply with the request because the Commission did not "feel bound by Section 1005 of the Charter." The Chairman of the Commission, W. C. Dutton testified in regard to the activities of the General Counsel of the Commission before the Prince George's County Delegation concerning proposed bills and their effect upon the Commission and its functions. He also testified that he was instructed by the County Executive that "the Charter prohibits this activity in any manner."

The Commission also received a memorandum, dated February 9, 1972, from the County Executive's Chief Administrative Officer, indicating that the County Executive's Legislative Liaison, Frank Kratovil, would assist all agencies with legislative matters; that bills introduced with the Gen-

eral Assembly should be forwarded through the Chief Administrative Office; and, further, that a Legislative Liaison Office was being established in Annapolis which could be reached at certain hours on five days of the week.

It is clear that the County believes that the Commission is "an agency that receives and disburses County funds" and, as such, is subject to the provisions of Section 1005 of the Charter. It appears clear to us that, here again, the County and the Commission are at loggerheads in this sensitive area and that this confrontation is almost inevitable. This controversy is ripe for decision in view of the fact that the General Assembly meets every year with Legislative Council hearings occurring in between the regular sessions and the continuing nature of the Commission's functions and activities.

Another serious difficulty arose from the contemplated transfer by the County Executive of four planners of the Commission's staff to the staff of the County, purporting to act under the provisions of Section 501 of the Charter providing that, except "as otherwise provided in the Charter or in State law, all agencies of the County government shall be subject to the direction, supervision, and control of the County Executive." The testimony indicated that this contemplated change would impair the ability of the Commission to perform its statutory duties and that there was no procedure for transferring merit system employees from the staff of the Commission to the staff of the County. We have already set out an excerpt from the County Executive's letter of April 22, 1971, in which Item 4 proposes this transfer and the subsequent reduction of the Commission's budget. The transfer of the four Commission employees was imminent so that the controversy was ripe for decision.

Another area of controversy between the County and the Commission is in regard to the Commission's power to acquire land. Section 7 of Chapter 780 authorizes the Commission to appoint a Director of Land Acquisition; Section 26 authorizes the Commission to acquire land for specific purposes and to improve and develop it; and Section 30 grants the power of eminent domain to acquire the necessary land in order to carry out the duties of the Commission.

Section 508 of the Charter, however, provides for the acquisition of land by agencies of the County "receiving or disbursing County funds" to the "extent permitted by State law." Under Section 503, the County Executive may propose by Executive Order changes in the organization of the Executive Branch including the "assignment of functions, powers and duties among agencies."

In a "Synopsis of Real Estate and Land Acquisition Functions in Prince George's County, Maryland," prepared for the County Executive, one of the proposals was:

> "It is proposed that a professional land acquisition (Real Estate) function be created responsible for all land acquisition, leasing of office space and disposal of excess land required by the County government or any department, division, county agency or utility under the control of County government."

It is clear that the County considers the Commission to be a "County agency" within the meaning of Section 508 of the Charter, as evidenced by a letter dated March 30, 1971, from the Chief of the County Bureau of Engineering to the Associate Director of Parks of the Commission. The letter included a copy of the Synopsis and requested comments and recommendations to determine the feasibility of "consolidating *all* County land acquisition in *one County Real Estate Division*." (Emphasis supplied) In our opinion, the "proposal" in the Synopsis has reached a sufficiently definite stage to justify declaratory relief.

Another area of confrontation between the Commission and the County resulted

from the effort of the County Executive to consolidate the Commission's Legal Department with the County Attorney's Office. Section 7 of Chapter 780 provides for a General Counsel for the Commission. Section 508 of the Charter provides that agencies of the County receiving or disbursing County funds shall utilize the legal services of the County; and Section 501 provides that all agencies of the County shall be subject to the "direction, supervision, and control of the County Executive."

In a memorandum dated April 6, 1971, the County Executive advised the Commission that he had "instructed the Finance Director to combine selected proposed expenditures associated with legal activities under the Office of Law." The County Executive indicated that the Commission would, effective July 1, 1971, "receive all legal services from the Office of Law" and have its budget accordingly reduced.

Item 3 of the County Executive's letter, excerpted above, repeats the proposal to consolidate with the County Attorney's Office that portion of the Commission's legal staff funded by the County. In the proposed budget message of the County Executive, dated May 13, 1971, it was stated that "seven new positions had been added to the Office of Law in an effort to centralize legal services" and that, beginning in the Fiscal Year 1972, the Office of Law would "provide *complete Legal services* to the County departments, *including*" the Commission. (Emphasis supplied) Indeed, the County Executive, on April 2, 1971, directed the Commission to dismiss its pending appeal in the case of Prince George's County v. Laurel, No. 385, September Term, 1970, at that time pending in this Court. Upon the Commission's refusal to dismiss its appeal, the County Attorney filed a line of dismissal as to the County; and the Commission, on its own motion, was later able to have itself reinstated as a proper party to pursue the appeal. There seems little doubt that the controversy in regard to the Commission's Legal Department is ripe for decision by declaratory judgment.

There is a substantial controversy between the Commission and the County in regard to the Commission's mandatory and discretionary park taxes within both the Metropolitan District (Chapter 780, Section 51) and the Regional District (Chapter 780, Section 93). Chapter 780 provides that each tax within each County shall be levied and collected by the respective County government and remitted to the Commission to fund the functions and activities of the Commission.

Section 1006 of the Charter provides that the County Council shall have no power to levy any *ad valorem* tax for an "agency which receives or disburses County funds." The County has interpreted this provision to prohibit the County Council from levying and collecting the taxes provided by Chapter 780 for the Commission.

The County Attorney, on May 19, 1971, advised the County Council that Art. VIII of the Charter did not permit "any agency submitting a budget request" to by-pass the County Executive and that the "document submitted by" the Commission was "not an official budget submission and may not be treated as such." We have already observed that the chancellor issued a temporary injunction in regard to the Commission's tax problem. This controversy, in our opinion, is obviously ripe for decision by declaratory judgment.

One important and continuing area of controversy between the Commission and the County relates to the Zoning Ordinance adopted for the Regional District by the District Council. The controversy revolves around five zoning problems, *i. e.*, (1) application for map amendments and for special exceptions; (2) refiling of such applications; (3) conditional zoning; (4) Section 709 of the Charter in regard to conflict of interests; and, (5) redrafting of official zoning maps. We now turn to a consideration of these controversies.

(1)

Section 30.11 of the Zoning Ordinance for the Regional District provides for certain information on an application for a map amendment and Section 28.11 provides for specified information on an application for a special exception. Section 706(b) of the Charter, on the other hand, requires information on both types of applications different from that required by the Zoning Ordinance. The question arose in regard to which requirements were applicable. The County Attorney advised the County Council that the Charter requirements applied to all applications filed subsequent to February 8, 1971. The Planning Board sent a form letter to 449 applicants for map amendments and also to applicants for special exceptions, then pending before the Planning Board, advising the applicants to supply the additional information required by the Charter. Thus, it is seen that applicants are required by the County to comply with the Charter provisions, rather than the Zoning Ordinance requirements, and that this controversy is ripe for decision by declaratory judgment.

The limitations of time upon the refiling of applications for map amendments and of special exceptions in the Zoning Ordinance differ substantially from such provisions in the Charter. The evidence indicates that this situation has resulted in much uncertainty and confusion both among the officials concerned and various members of the public who wish to refile applications for map amendments or for special exceptions. For example, a citizen who had three zoning applications returned by the Planning Board because of noncompliance with the Charter requested a refund of his filing fees. The Chairman of the Commission responded:

"This Commission has been and will continue to accept zoning applications in accordance with the Zoning Ordinance. It has been the opinion of our Legal Counsel that we should continue to so accept applications although they may be contrary to some provision of the New Charter for the County. It is our Legal Department's opinion that the Zoning Ordinance is controlling in such factors. Therefore, it is this Commission's position that the filing was valid and legal.

"The District Council would have provided for the refunding of your deposit if it was their intention that such be done. I regret the situation as it now exists and hope that this matter may be cleared up as quickly as possible.

"As for your situation, I can find no relief in the Zoning Ordinance nor under the Laws which this Commission operates."

This issue is obviously ripe for resolution by a declaratory judgment.

(3)

The Regional District Act, Section 78(e) permits the use of conditional zoning within the County and gives the District Council authority to enact an ordinance to effectuate conditional zoning. In accordance with this grant of authority, the District Council adopted Section 30.5 of the Zoning Ordinance to provide for conditional zoning under various conditions and restrictions. Section 708(d) of the Charter prohibits conditional zoning. The County Attorney, on March 9, 1971, advised the County Executive that Section 708(d) of the Charter controlled. The Chairman of the Commission testified that prior to the adoption of the Charter, the Planning Board had used conditional zoning in accordance with the Zoning Ordinance, but that since the adoption of the Charter, the Planning Board could not determine with any clarity whether it could continue to use conditional zoning as permitted by the Zoning Ordinance. This controversy is ripe for decision by a declaratory judgment.

(4)

The "Conflicts of Interest" provision of Chapter 780 does not require the Commis-

sioners or its staff members to file or disclose copies of income tax returns or landownership statements. Section 709 of the Charter, however, provides that all public officials participating in a zoning case shall file a public statement on landownership and holdings and copies of federal and state income tax returns. The County requirements have been interpreted to apply to the Prince George's County members of the Commission, the General Counsel of the Commission, the Chief Zoning Officer in the County and to others. Two letters dated March 16 and June 15, 1971, from the County Attorney reminds the Commission of the Charter requirement to file statements of landholdings and copies of federal and state income tax returns for public record. Here again, this issue is ripe for resolution by a declaratory judgment.

(5)

Sections 76 and 78 of Chapter 780 provide procedures for the redrafting of official zoning maps for the Regional District within the County. The Commission decided to redraft the official zoning maps and the project was begun in 1966. Seven draftsmen worked on the project and an outside consulting firm was paid a consulting fee of $50,000. Section 701(c) of the Charter provides that "Comprehensive Zoning Maps" may not be adopted for an area smaller than a "planning area." The County Attorney advised the Commission that the redrafting was considered to be a comprehensive rezoning and must comply with the provisions of Section 701(c) of the Charter in regard to planning area boundaries. As a result, the redrafting project has come to a standstill because of the uncertainty of the Commission's staff in regard to planning area boundaries. This issue is ripe for resolution by declaratory judgment.

Another important area in which there is a controversy between the Commission and the County relates to planning. The controversy revolves around two principal problems, *i. e.*, (a) planning areas and (b) the appearance on Master Plans of the cost of public facilities. We will now consider these two areas of difficulty.

(a)

Section 63(b) of the Regional District Act provides that the Commission shall prepare a map showing the Regional District divided into "local planning areas" without any other restriction, whereas Section 701 (b) of the Charter adds a limitation that "planning areas" shall be "predetermined by law and shall be substantially equal in geographic size."

The evidence indicates that in an effort to reconcile, if possible, the provisions of the respective provisions, the Chairman of the Commission, on August 17, 1971, submitted to the County Executive a proposal to establish 64 planning areas ranging in size from 5.45 acres to 10.64 acres in area. The County Executive, on November 29, 1971, advised the Chairman of the Commission that the proposal "would not satisfy this requirement [of Section 701(b)] under the Charter." The request of the County Executive for a new planning area map which would conform with the requirements of Section 701(b) of the Charter has, in the opinion of the Chairman of the Commission, taken "a susbtantial amount of staff time" and has caused delays in establishing planning areas. This issue should be resolved by a declaratory judgment.

(b)

Chapter 780 does not require Master Plans to contain data on the cost of public facilities, but Section 701(b) of the Charter provides that a Master Plan "shall contain an estimate of the cost of all public facilities . . . . ." The Chairman of the Commission testified that the Master Plans proposed by the Commission for Colmar Manor and for Suitland-District Heights, after substantial work by the Commission's staff and which complied

with the provisions of Chapter 780, were rejected by the County Executive as not complying with the provisions of Section 701(b) of the Charter. Here again, this issue should be decided by a declaratory judgment.

The present case is clearly distinguishable from our recent decision in Prince George's County, Maryland v. Board of Trustees of Prince George's Community College, Md., 304 A.2d 228 (1973) [1972, decided May 10, 1973] in which we held that there was no justiciable controversy ripe for declaratory judgment. In the *Community College* case, the County Executive of Prince George's County returned the estimated operating budget of the Community College for the Fiscal Year 1973, asking that a detailed budget request be supplied. The Community College deemed that the Charter conflicted with Maryland Code (1957, 1969 Repl.Vol.) Art. 77A, §§ 1-10. We observed that the "county at no time refused to comply with the Trustees' budget request; and, in fact, acquiesced in a *pendente lite* order which, 'without prejudice to the respective positions of the parties with respect to the matters in issue,' required the county to provide the funds budgeted by the Trustees for the college's 1973 fiscal year." We held that the *Community College* case lacked "'the state of facts which must have accrued' to establish the requisite 'justiciable controversy.'" As we have indicated, the facts in regard to the various controversies between the Commission and the County had indeed "accrued" and established the existence of justiciable controversies.

[3] It thus appears that there are many justiciable issues ripe for declaratory judgment as the chancellor concluded in his opinion and indicated in Paragraph 2 of the decree of October 2, 1972. Paragraphs 4 through 15 of that decree resolved these issues in favor of the Commission by declaratory judgment.

III.

[4] We will now consider whether Chapter 780 is a public general law which may not be amended or superseded by the Charter, as the chancellor concluded in the decree of October 2, 1972. This determination is the foundation for the declaratory judgments on the specific issues in Paragraphs 4 through 15 of that decree. We have concluded that this decision of the chancellor was correct.

Section 4 of Article XI-A of the Constitution of Maryland prohibits the enactment by the General Assembly of a public local law for any home rule county on any subject covered by the Express Powers Act. Section 4 then provides:

> "Any law so drawn as to apply to two or more of the geographical sub-divisions of this State shall not be deemed a Local Law, within the meaning of this Act. The term 'geographical sub-division' herein used shall be taken to mean the City of Baltimore or any of the Counties of this State."

Section 3 of Article XI-A provides that the law-making power of a Charter County shall be vested in an elective legislative body and then provides in part:

> "From and after the adoption of a charter by . . . any County of this State, . . . the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said City or County including the power to repeal or amend local laws of said City or County enacted by the General Assembly, upon all matters covered by the express powers granted as above provided . . . ."

Section 3 also provides, however, that Charter Counties may not enact planning or zoning laws for incorporated municipalities and, in regard to interpretation, provides:

> "In case of any conflict between said local law and any Public General Law

now or hereafter enacted the Public General Law shall control."

It is clear to us that Chapter 780 does "apply to two or more of the geographical sub-divisions of this State" and by the express provisions of Article XI-A, Section 4 of the Maryland Constitution is "not to be deemed a Local Law." We have previously so held in Prince George's County v. Laurel, *supra*, 277 A.2d 262 (1971), in which Judge Finan, for the Court, affirmed the holding of the lower court that "acts affecting the Commission are general laws, a conclusion borne out by past decisions of this Court (City of Bowie v. Washington Suburban Sanitary Commission, 249 Md. 611, 241 A.2d 396 (1968); Middleman v. Maryland-National Capital Park & Planning Commission, 232 Md. 285, 192 A.2d 782 (1963)) . . . ." 262 Md. at 188, 277 A.2d at 271. *Cf.* Barranca v. Prince George's County, 264 Md. 562, 287 A.2d 286 (1972).

[5] The fact that a public general law "permits or directs differences in matters of mere administrative detail suited to the particular needs of the localities does not make it any less a public general law," as our predecessors observed in Norris v. Mayor and City Council of Baltimore, 172 Md. 667, 681, 192 A. 531, 537 (1937). Chapter 780 does contain "administrative detail" suited to the particular needs of the respective localities, but remains a public general law and, as such, is not subject to amendment or repeal by the County Council and is not superseded or modified by the Charter.

As we have indicated, the titles to Chapter 992 and Chapter 1008 (Laws of Maryland 1943) indicated that the General Assembly understood and intended that they were public general laws enacted as bi-county acts and not as public local laws of either county.

The consolidation, as it were, of these two public general laws into Chapter 780 obviously did not change Chapter 780 into a public local law!

[6] The County earnestly contends that, as a chartered County, it was granted the power to "enact local laws, for the protection and promotion of the public safety, health, morals, and welfare relating to zoning and planning" by the Express Powers Act (Chapter 614, Laws of Maryland 1959), Code (1957, 1973 Repl.Vol.) Art. 25A, § 5(X). Therefore, the County alleges that the provisions of the Charter in regard to planning and zoning supersede or amend inconsistent provisions under Chapter 780. This contention cannot prevail in view of the provisions of Section 2 of the Express Powers Act, itself, which states:

> "Sec. 2. And be it further enacted, that in so far as the provisions of this subsection may be inconsistent with or contrary to the provisions of the Maryland-Washington Regional District Act, . . . the provisions of this sub-section shall have no application so long as such District Act is in force and effect and nothing contained herein shall be deemed or construed to affect the validity or operative effect, of said [District Act], which established City and Regional Planning in Montgomery and Prince George's Counties within the limits of the Maryland-Washington Regional District as said District is now or shall hereafter be defined by law."
>
> Chapter 614, Laws of Maryland 1959

Thus, the Charter, adopted pursuant to the provisions of the Express Powers Act and Article XI-A of the Constitution of Maryland, is not "applicable" to the provisions of Chapter 780. This does not mean that the provisions of the Charter are invalid or illegal. They are effective in those portions, if any, of Prince George's County not included in the Regional District. The County's remedy in this regard is not with the Courts, but with the General Assembly.

The County cites three of our decisions as indicating that we have relied upon provisions of the Charter "to adjudicate individual zoning cases." These cases are Prince George's County Council v. Prestwick, Inc., 263 Md. 217, 282 A.2d 491 (1971); Heller v. Prince George's County, 264 Md. 410, 286 A.2d 772 (1972); and Dal Maso v. Prince George's County, 264 Md. 691, 288 A.2d 119 (1972). In *Prestwick*, the appeal was from the reversal by the Circuit Court for Prince George's County of a resolution denying a rezoning application. The Charter did not apply and was not relied upon; the only reference to the Charter is found in a footnote. In *Heller*, the appeal was from an order of the circuit court affirming the action by the Board of County Commissioners, which rezoned property from R-R (Rural Residential) to I-1 (Light Industrial). Here again, the Charter is only referred to in a footnote in the Court's opinion.

In *Dal Maso*, this Court affirmed the lower court's denial of an application to rezone. We indicated, as a possible alternative ground for our decision, that the case involved a "floating zone", which was specifically prohibited by Section 708(e) of the Charter. The Commission was not a party to the *Dal Maso* case and the point in regard to the "floating zone" was raised in one paragraph of the County's brief, as appellee in that case. Also, the question was never raised as to whether the subject property in *Dal Maso* was included within the Regional District. Hence, the specific provision of Art. 25A, § 5(X) of the Code, making the Express Powers Act inapplicable, was not raised for this Court's consideration and, of course, not argued, briefed or decided by us. Inasmuch as we now learn that the subject property involved in *Dal Maso* was indeed within the Regional District, the *dictum* relied upon by the County was incorrect and inadvertent and is no authority in support of the County's contention. The *holding* in *Dal Maso* was that the applicant had not complied with the mandatory requirements of the zoning law in regard to "floating zones"; and, therefore, the action of the District Council in rejecting the application and of the lower court in affirming that action was correct. We adhere to that holding, but, as we have indicated, disavow the *dictum*.

The County has raised thirteen contentions in its brief. Its first two contentions in regard to standing to sue and the presence of justiciable controversies ripe for declaratory judgment have already been discussed in this opinion.

The County's third contention that the provisions of the Charter are presumed to be valid, lawful, operative and applicable to the Commission and the Planning Board has, in effect, been previously considered by us, but some additional consideration by us should be made.

[7, 8] The Commission properly concedes that the provisions of the Charter are presumed to be valid, but also properly contends that they are presently not applicable to the provisions of Chapter 780 because of the express provisions of the Express Powers Act. The Planning Board is the Planning Board of the Commission and not of the County Council. It exists by virtue of Chapter 780 and the Charter provisions are not applicable to it.

The fourth contention of the County that the chancellor erred in not following the *Prestwick*, *Heller* and *Dal Maso* cases has been considered by us and decided adversely to the County.

The County next contends that the power of conditional zoning, which it states was granted solely to Prince George's County by Chapter 471 of the Laws of 1968, was no longer effective because of the enactment of Chapter 711 of the Laws of 1969 and by the enactment of the Charter, Section 708(d), which prohibited conditional zoning.

After we had held invalid a conditional rezoning relating to land in Prince George's

County in Carole Highlands Citizens Assoc. v. Board of County Commissioners of Prince George's County, 222 Md. 44, 158 A.2d 663 (1960), the General Assembly enacted Chapter 471 of the Laws of 1968, amending "the laws concerning [the Commission] within Prince George's County with particular respect to amendments to zoning regulations" and providing:

"59-83(g)

"(1) In approving any local map amendment after July 1, 1968, under this Section, the District Council for Prince George's County, may give consideration to and adopt such reasonable requirements, safeguards, and conditions, as may in its opinion be necessary either to protect surrounding properties from adverse effects which might accrue from such zoning amendment, or which would further enhance the coordinated, harmonious, and systematic development of the Regional District * * * The District Council may adopt such ordinances and regulations as may in its discretion be necessary to provide adequate notice, public hearings, and enforcement procedures for the implementation of this Section."

The Board of County Commissioners in January 1969 adopted an amendment to the Zoning Ordinance implementing the conditional zoning authorized by Chapter 471.

By Chapter 711 of the Laws of 1969, the General Assembly repealed Section 59-83 (which the County contends included Section 59-83(g) quoted above) and provided, in part:

"Both districts and zones may be created; all such regulations shall be uniform for each class or kind of building throughout any district or zone, but the regulations in one district or zone may differ from those in any other district or zone."

This, the County argues, restored the Regional District Act to the same uniformity provisions as were before this Court in *Carole Highlands*.[1]

[9] The County's contention that Chapter 471 of the Laws of 1968 was repealed by Chapter 711 of the Acts of 1969 is concluded against the County by our decision in Prince George's County v. McBride, 263 Md. 235, 282 A.2d 486 (1971) as the chancellor properly held. In *McBride*, we held that inasmuch as Chapter 711 expressly repealed only the law as it existed in the *1963 edition* of the local laws and the *1967 supplement*, it did not repeal the amendments to the section enacted in 1969. This holding is equally applicable to the contention that Chapter 471 of the Laws of 1968 was repealed by Chapter 711 as Chapter 471 was enacted after the 1967 supplement.

[10, 11] From what we have already stated, the provision of the Charter in regard to conditional zoning is inapplicable to the power granted by Chapter 471, a public general law granting certain zoning powers to a District Council within the Regional District. Chapter 471 is not converted into a public local law merely because its impact is upon that portion of the Regional District lying within Prince George's County. *See* Norris v. Mayor & City Council of Baltimore, *supra*.

The sixth question raised by the County relates to whether the Prince George's County Planning Board is a "local body" subject to the provisions of the Charter and regulations enacted and promulgated pursuant to the Charter. The County's

1. The County also suggests that a municipal corporation has no power to bargain away its police power and to attempt this is offensive to the requirements of due process of law. The chancellor declined to express his opinion on the constitutional contention because the County had not offered any constitutional objection to Chapter 471 during the course of the trial. Not having preserved this point for appellate review, we will decline to consider it. Maryland Rule 885.

theory is that regardless of whether Chapter 780 is a public general law so far as the Commission may be concerned, the Planning Boards for the portions of the Regional District situated in each county are local agencies and should be subject to local regulations.

[12] Here again, the County confuses local functions and responsibilities with local laws. Chapter 780, a public general law, does provide for *local functions* and does impose *local responsibilities*; but, as we have already indicated, such provisions do not change Chapter 780 from a *public general law* to a *public local law*, and make the Planning Boards subject to the Charter and local regulations. Chapter 780 is by no means unique in its application of a public general law to local situations. For example, we have held that the public general laws relating to the road system of the State may not be interfered with or controlled by local laws enacted by counties or municipalities, even though a bridge or segment of road is "local." Wyatt v. State Roads Commission, 175 Md. 258, 1 A.2d 619 (1938). Also, individual segments of streetcar lines, fares and taxes were "local" in Baltimore City and Baltimore County, but we held that the public general law (Chapter 670 of the Laws of 1961) creating and granting powers to the Metropolitan Transit Authority was immune from repeal or amendment by public local laws. Baltimore Transit Co. v. Metropolitan Transit Authority, 232 Md. 509, 194 A.2d 643 (1963). More recently, we held that the City of Bowie could not repeal the Regional authority of the Washington Suburban Sanitary Commission under Chapter 122 of the Laws of 1918, as amended, notwithstanding the fact that the Sanitary Commission—Bowie sewage treatment facilities are "local." Bowie v. Washington Suburban Sanitary Commission, 249 Md. 611, 241 A.2d 396 (1968).

The seventh and eighth questions presented by the County relate to the *ad valorem* taxes for the Commission and the Planning Board and may be considered together.

[13] The County first contends that the provision of Chapter 780 requiring the County to levy *ad valorem* taxes against real property in those portions of the Regional District and Metropolitan District lying within Prince George's County is unconstitutional as violating Article 15 of the Declaration of Rights of the Constitution of Maryland, requiring uniformity within a taxing District.

Article 15 of the Declaration of Rights provides in part that:

> "[T]he General Assembly shall, by uniform rules, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied . . . . by the Counties . . . shall be uniform within each class or sub-class . . . ."

The County contends that the Regional District is a taxing District and that the Metropolitan District is also a taxing District with a *single* taxing authority. The County argues that inasmuch as the *ad valorem* taxes in the portions of the Districts in the respective counties are different, they are unequal and violate the provisions of Article 15 of the Declaration of Rights. There are two errors in this argument, *i. e.*, (1) there is no single taxing authority for the Regional and Metropolitan Districts and (2) these Districts were not created as *taxing* Districts by Chapter 780, the Regional District being created to administer planning and zoning and the Metropolitan District to administer the park system. Each District within each county is funded by a tax levied by each county within its portion of the District and the tax is uniform throughout each county's applicable jurisdiction for the services and programs provided by Chapter 780. There is no legal requirement that services rendered by the Commission in each county be

equal and there is no law which requires that the tax levied in each county to pay for the services be equal. Thus, the *ad valorem* tax levied by each county within the District in that county's taxing jurisdiction is uniform and is not in conflict with the provisions of Article 15 of the Declaration of Rights.

The County's other attack on the *ad valorem* taxes is that the levying of such taxes is subject to the limitations contained in Section 1006 of the Charter, which provides:

> "Except as required by State law or the terms of any certificate of indebtedness outstanding on the effective date of this Charter, the Council shall have no power to levy any *ad valorem* tax on real or personal property for the benefit of any particular agency which receives or disburses County funds. Any *ad valorem* tax on real or personal property, with the aforementioned exceptions, shall accrue only to the general fund of the County."

[14] The resolution of this issue turns initially upon a determination of whether the Commission and its County Planning Board are "agencies" which receive or disburse County funds. We have concluded, as did the chancellor, that they are not such "agencies." The taxes levied, collected and remitted by the County to the Commission, pursuant to Chapter 780 as a public general law, cannot be considered as "County funds" regardless of the language of Section 804 (b) of the Charter, which provides:

> "(b) The term 'County' funds' shall mean any monies received by the County or appropriated or approved by the Council or to which the County may at any time have legal or equitable title."

As we have indicated, the Charter cannot supersede or amend the provisions of a public general law so that the *ad valorem* taxes levied, collected, appropriated for and remitted to the Commission are not "County funds"; the Commission and the Planning Board are not "County agencies."

The tenth question concerns the adoption of Section 8 of the Schedule of Legislation appended to the Charter which professes to establish a County Department of Recreation. The County contends that Section 8 repealed Chapter 732 of the Laws of 1970 and returned to the County direct control of the Recreation Department. Again, we disagree with the County. As discussed above, Chapter 732 of the Acts of 1970 was an Act:

> ". . . to provide for the transfer, regulation, operation and maintenance of all recreation functions, programs, facilities, and merit system personnel of the Prince George's County Recreation Department by and to The Maryland-National Capital Park and Planning Commission, to establish the taxing authority thereto, and to provide a program of recreation within Prince George's County and the coordination of such program with the Commission's Park functions."

[15] This Act charged the Planning Board *of the Commission* with the responsibility of "providing an adequate and balanced program of recreation to serve the varied needs and interests of the several age groups among the residents of Prince George's County *and to coordinate such program with the Commission's park functions.*" (Emphasis supplied.) The Planning Board and the Commission are not separate entities. It is clear to us that Chapter 732 is a public general law and is not subject to amendment or repeal by Section 8 of the Schedule of Legislation appended to the Charter.

The County relies upon Prince George's Co. v. Donohoe, 220 Md. 362, 152 A.2d 555 (1959) for its contention that Chapter 732 is a public local law. In our opinion, this reliance is misplaced. *Donohoe* involved the sufficiency of the title to Chapter 712 of the Laws of 1957, amending zoning procedure within the Regional District within

Prince George's County. It was argued in *Donohoe* that because the Regional District Act was a bi-county act, any amendment thereto also had to be a bi-county act. Therefore, the argument continued, the title to Chapter 712 was insufficient because it failed to mention that it amended the Montgomery County Code, as well as the Prince George's County Code. We found these arguments to be untenable in that amendments to the Regional District Act need not be bi-county acts and there was no requirement to amend the Montgomery County Code since Chapter 712 applied solely to Prince George's County. Chapter 732, however, amended *both* the Montgomery County Code and the public local laws of Prince George's County so that Donohoe is clearly distinguishable from the instant case.

[16] Questions 11 and 13 relate to whether Sections 1005 and 709 of the Charter, discussed above, apply to members of the Planning Board. These provisions do not amend or supersede the provisions of Chapter 780, a public general law; and the Planning Board is not an agency receiving and disbursing County funds for the reasons we have stated so that these sections do not apply to the Planning Board.

Question 12 relates to whether Section 313 of the Charter relating to auditing is applicable to funds provided by the County to the Planning Board. In Paragraph 9 of the decree of October 2, 1972, the chancellor declared that neither the Commission nor the Planning Board was "an agency which receives or disburses County funds" and, therefore, is not subject to that section. In Paragraph 18, however, of the decree of October 2, the chancellor declared that, pursuant to Chapter 898, Sec. 18-1 (B) 8 of the Laws of 1965, the Internal Auditor of the county, at the request of the President of the Board of County Commissioners, may examine the financial operations of the Commission in any year in which it receives funds from the budget of the Board of County Commissioners, or its successors in title and function, or from the county tax revenue as approved by the Board of County Commissioners, or its successors in title and function.

We perceive no inconsistency between Paragraphs 9 and 18. The auditing function relates *only* to money from the County budget and does not relate to the separate funds of the Commission.

The County in its argument also contends that the County may require the Planning Board to use the staff services of the County for legal services, budgeting, accounting, preparing data processing, public releases and other services, pursuant to Section 508 of the Charter.

As we have indicated, the Planning Board has no employees and receives all of its staff services from employees of the Commission, pursuant to Chapter 780, a public general law, the provisions of which cannot be amended or superseded by the Charter. Barranca v. Prince George's County, *supra*.

The County generally argues, with much earnestness, that the present legal situation in Prince George's County leads to duplication, waste and a frustration of the will of the electorate as expressed in the Charter. These arguments may have appeal if made to the General Assembly for amendments to Chapter 780, but they are matters over which the Courts of this State properly have no control.

Decree of October 2, 1972, affirmed, the appellant to pay the costs.

APPENDIX: *Final Decree of October 2, 1972*

"Upon the Bill of Complaint and Answer thereto and all other pleadings filed herein, and after trial in Open Court on the 27th of March, 1972, at which time all parties were represented by Counsel and had the opportunity to introduce evidence, and upon consideration of the evidence, arguments and memoranda filed herein, together with the Opinions of the Court heretofore, fil-

ed, it is this 2nd day of October, 1972, by the Circuit Court for Prince George's County, Maryland, Sitting as a Court of Equity, ADJUDGED, ORDERED and DECREED as follows:

"The Court makes the following declarations with reference to the relationship, legal status, rights, duties and responsibilities of The Maryland National Capital Park and Planning Commission, Prince George's County, said Laws of the Park and Planning Commission (the Maryland-Washington Regional District Act and Maryland-Washington Metropolitan District Act) being Chapter 780, Laws of Maryland 1959, as amended, and the Prince George's County Charter, and such other statutes, ordinances and regulations as shall be herein mentioned:

"1. The Maryland National Capital Park and Planning Commission (hereinafter referred to as the Commission) has the authority and standing to sue for Declaratory Judgment herein.

"2. There is a justiciable controversy between the Commission and Prince George's County (hereinafter referred to as the County) involving concrete interests for determination by declaratory relief pursuant to Article 31A, Annotated Code of Maryland, 1957.

"3. The Maryland-Washington Regional District Act as enacted by Chap. 780, Laws of Maryland 1959, as amended, is a Public General Law.

"4. The County may not exercise the powers of planning and zoning within the 'Regional District' and that provisions of Art. VII of the Prince George's County Charter are not applicable to that portion of Prince George's County within the 'Regional District'.

"5. Sec. 709—*Conflicts of Interest*—of the Prince George's County Charter does not apply to the members of the Commission nor to its employees.

"6. The Commission and the Prince George's County Planning Board are not 'agencies which receive and disburse County funds' within the meaning of that phrase as used in Sec. 1005 of the Prince George's County Charter and are not subject to the provisions of that Section.

"7. The mandatory *ad valorem* recreation tax provided in Chap. 732, Laws of Maryland 1970, must be levied and collected by the Prince George's County Council and the proceeds thereof remitted to the Prince George's County Planning Board of The Maryland National Capital Park and Planning Commission as provided by law.

"8. The County cannot compel a merger of the Legal Staff of the Commission with the Legal Staff of the County, nor can it deduct from funds due the Commission the costs of legal services and provide the same in kind through the Office of the County Attorney.

"9. That neither the Commission nor the Prince George's County Planning Board is an 'agency which receives or disburses County funds', as that terminology is used in Sec. 313—*Office of Audits and Investigation*—of the Prince George's County Charter and are, therefore, not subject to the requirements of that Section of the Charter.

"10. That neither the Commission nor the Prince George's County Planning Board is subject to the provisions of Sec. 501 of the County Charter, and Prince George's County may not, therefore, by Executive Order or otherwise direct a transfer of personnel in the staff positions of the Commission or the Prince George's County Planning Board.

"11. Funds derived from special *ad valorem* taxes levied by the County, pursuant to the provisions of Chapter 780, Laws of Maryland, are not 'County funds' as defined in Sec. 804 (b) of the Charter, and neither the Commission nor the Prince George's County Planning Board is an 'agency which receives or disburses County funds' as that term is used in Sec. 804 (a) of the Charter.

"12. That neither the Commission nor the Prince George's County Planning Board is subject to the provisions of Sec. 805—*Formulation of Capital Budget and Capital Program*—of the Prince George's County Charter.

"That neither the Commission nor the Prince George's County Planning Board is subject to the provisions of Sec. 807—*Formulation of Current Expense Budget*—of the Prince George's County Charter.

"13. Prince George's County must annually levy and remit to the Park and Planning Commission all mandatory *ad valorem* taxes required by Chapter 780, Laws of Maryland 1959, as amended. The County may levy in the form of special *ad valorem* taxes those discretionary *ad valorem* taxes authorized by Chapter 780, Laws of Maryland 1959, as amended. The funds derived from such taxes are not 'County funds' as that term is used in the County Charter; and that proceeds of such taxes may not be included in the general fund of Prince George's County. The *ad valorem* tax rate set by the Montgomery County Council within the Regional District within Montgomery County and the *ad valorem* tax rate set by the Prince George's County Council within the Regional District within Prince George's County are both uniform within the portions of the Regional and Metropolitan Districts lying within each County. The provisions for levying of *ad valorem* taxes as provided by Chapter 780, Laws of Maryland 1959, as amended, are not unconstitutional under the provisions of Article XV of the Declaration of Rights to the Constitution of Maryland.

"14. Neither the Commission nor the Prince George's County Planning Board is an 'agency' within the meaning of Section 1017 (m) of the Prince George's County Charter.

"15. Chapter 471, Laws of Maryland 1968, which amends Chapter 780, so as to enable conditional zoning within the Regional District in Prince George's County, is part of the Public General Law (Chapter 780, Laws of Maryland 1959, as amended) and, therefore, not affected by the adoption of the Charter. In addition thereto, the Court declares that Chapter 471, Laws of Maryland 1968, was not repealed by Chapter 711, Laws of Maryland 1969, therefore, conditional zoning may be employed in zoning map amendment cases arising in Prince George's County, pursuant to the provisions of Chapter 471, Laws of Maryland 1968, notwithstanding the uniformity provisions of Chapter 711, Laws of Maryland 1969, and the provisions of Section 708(d) of the County Charter prohibiting such zoning.

"16. The Prince George's County Planning Board is subject to the budget and fiscal procedures and the purchasing laws and regulations of Prince George's County by virtue of the provisions of Chapter 97, Laws of Maryland 1970, and specifically Section 2311., enacted therein, when and if the said Planning Board receives more than one-half of its operating expenses from Prince George's County, exclusive of the proceeds of mandatory and discretionary *ad valorem* taxes authorized by Chapter 780, Laws of Maryland 1959.

"17. The Defendants, County Executive, County Council, District Council and the individually named members thereof are not proper party Defendants and they are hereby dismissed as party Defendants.

"18. That pursuant to Chapter 898, Sec. 18-1 (B) 8, Laws of Maryland 1965, the internal auditor of Prince George's County, or his successor in title and function, at the request of the President of the Board of County Commissioners, or his successor in title and function, may examine the financial operations of the Plaintiff in any year in which it receives funds from the budget of the Board of County Commissioners, or its successors in title and function, or from the County tax revenues as approved by the Board of County Commissioners, or its successors in title and function.

"With respect to the character of the funds received by the Plaintiff, the Court reaffirms its declarations Numbered 11 and 13; and it is further

"ADJUDGED, ORDERED and DECREED that all injunctive Orders previously issued by the Court herein BE and they ARE hereby vacated; and it is further

"ORDERED and DECREED that each party hereto shall pay one-half (½) of the costs of these proceedings."

B-1

MANDATE

Court of Appeals of Maryland

No. 269, September Term, 19 72

Prince George's County, Maryland

v.

Maryland-National Capital Park and Planning Commission

Appeal from the Circuit Court for Prince George's County.
Filed: November 27, 1972.
December 4, 1972: Motion for leave to file brief in excess of fifty pages filed by appellant.
December 11, 1972: Opposition to above motion filed.
December 11, 1972: Appellee's motion filed to delete material from designation of record extract to be printed by appellant.
December 14, 1972: Above motion deferred pending final decision on merits.
December 18, 1972: Motion to file brief in excess of fifty pages granted, etc.
February 9, 1973: Appellee's motion to enlarge length of its brief filed.
February 16, 1973: Motion granted, etc.
April 5, 1973: Motion to strike portion of reply brief filed.
April 9, 1973: Reply to above motion filed. (OVER)

STATEMENT OF COSTS:

In Circuit Court:

Record	$ 20.00
Stenographer's Costs	607.20

In Court of Appeals:

Filing Record on Appeal	$ 20.00
Printing Brief for Appellant	493.03
Reply Brief	373.63
Portion of Record Extract — Appellant	2,309.00
Appearance Fee — Appellant	10.00
Motion for Reargument	5.00
Printing Brief for Appellee	1,128.20
Portion of Record Extract — Appellee	4,248.60
Appearance Fee — Appellee	10.00

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this fifth *day of* July *A. D. 19* 73.

Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

B-2

RECEIVED
JUL 9 1973
OFFICE OF CLERK FOR
PR. GEORGE'S CO., MD.

June 5, 1973: Decree of October 2, 1972, affirmed, the appellant to pay the costs. Opinion by Barnes, J.
June 21,1973: Motion for stay of mandate filed.
June 21, 1973: Motion for reargument and modification filed.
July 2, 1973: Motion for reargument etc. denied.

APPENDIX C

CONSTITUTION OF MARYLAND

ARTICLE XI-A

LOCAL LEGISLATION

Sec. 1

On demand of the Mayor of Baltimore and City Council of the City of Baltimore, or on petition bearing the signatures of not less than 20% of the registered voters of said City or any County (Provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition), the Board of Election Supervisors of said City or County shall provide at the next general or congressional election, occurring after such demand or the filing of such petition, for the election of a charter board of eleven registered voters of said City or five registered voters in any such Counties. Nominations for members for said charter board may be made not less than forty days prior to said election by the Mayor of Baltimore and City Council of the City of Baltimore or the County Commissioners of such County, or not less than twenty days prior to said election by petition bearing the signatures written in their own handwriting (and not by their mark) of not less than 5% of the registered voters of the said City of Baltimore or said County; provided, that in any case Two thousand signatures of registered voters shall be sufficient to complete any such nominating petition, and if not more than eleven registered voters of the City of Baltimore or not more than five registered voters in any such County are so nominated their names shall not be printed on the ballot, but said eleven registered voters in the City of Baltimore or five in such County shall constitute said charter board from and after the date of said election. At said

election the ballot shall contain the names of said nominees in alphabetical order without any indication of the source of their nomination, and shall also be so arranged as to permit the voter to vote for or against the creation of said charter board, but the vote cast against said creation shall not be held to bar the voter from expressing his choice among the nominees for said board, and if the majority of the votes cast for and against the creation of said charter board shall be against said creation the election of the members of said charter board shall be void; but if such majority shall be in favor of the creation of said charter board, then and in that event the eleven nominees of the City of Baltimore or five nominees in the County receiving the largest number of votes shall constitute the charter board, and said charter board, or a majority thereof, shall prepare within twelve months from the date of said election a charter or form of government for said city or such county and present the same to the Mayor of Baltimore or President of the Board of County Commissioners of such county, who shall publish the same in at least two newspapers of general circulation published in the City of Baltimore or County within thirty days after it shall be reported to him. Such charter shall be submitted to the voters of said City or County at the next general or Congressional election after the report of said charter to said Mayor of Baltimore or President of the Board of County Commissioners; and if a majority of the votes cast for and against the adoption of said charter shall be in favor of such adoption, the said charter from and after the thirtieth day from the date of such election shall become the law of said City or County, subject only to the Constitution and Public General Laws of this State, and any public local laws inconsistent with the provisions of said charter and any former charter of the City of Baltimore or County shall be thereby repealed.

Sec. 5. Amendments to any Charter adopted by the City of Baltimore or by any County of this State under the provisions of this Article may be proposed by a resolution of the Mayor of Baltimore or the City Council of the said City of Baltimore, or the Council of said County or by a petition signed by not less than 20% of the registered voters of said City or County, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition, and filed with the Mayor of Baltimore or the president of the County Council, and when so proposed shall be submitted to the voters of said City or County at the next general or congressional election occurring after the passage of said resolution, or the filing of said petition; and if at said election the majority of the votes cast for and against said amendments shall be in favor thereof, said amendment shall become part of the charter of said city or county from and after the thirtieth day after said election . . . .

* * *

Sec. 6. The power heretofore conferred upon the General Assembly to prescribe the number, compensation, powers and duties of the County Commissioners in each county, and the powers to make changes in Sections 1 to 6 inclusive, Article XI of this Constitution, when expressly granted as hereinbefore provided, are hereby transferred to the voters of each county and the voters of the City of Baltimore, respectively, provided that said powers so transferred shall be exercised only by the adoption or amendment of a charter as hereinbefore provided; and provided further that this Article shall not be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon said Counties or City as this article sets forth.

APPENDIX D

PRINCE GEORGE'S COUNTY CHARTER PROVISIONS

ARTICLE VII
PLANNING AND ZONING

Section 701. DEFINITION AND EFFECT OF TERMS USED IN THIS ARTICLE.

(a) The term "General Plan" shall mean a map, with accompanying data, including charts, plats, and descriptive matter, which outlines the prospective overall development of the entire Metropolitan Washington Area, or of both Montgomery and Prince George's Counties, and is prepared in cooperation with the planning authorities of other jurisdictions. There shall be only one general plan in force and effect in Prince George's County.

(b) The term "Master Plan" shall mean a map, with accompanying data, of the County or of one or more planning areas of the County. Planning areas shall be predetermined by law and shall be substantially equal in geographic size, except that an incorporated municipality or urban renewal district may constitute a planning area. Said plan, when organized by planning area, shall on a comprehensive basis assign a prospective land use, either of a public or private character, to each particular piece, parcel, or tract of land lying within the said planning area. Said plan, when organized on a county-wide basis shall, consistent with local area plans, assign the specific locations throughout the County of particular public improvements, including, but not limited to, roads, schools, firehouses, water lines, or sewer lines. A master plan shall contain an estimate of the cost of all public facilities which must be acquired and constructed in order to carry out the objectives and requirements of the plan. A master plan hereafter adopted and approved shall be of no force and effect until it is adopted and approved in compliance with procedures established by law, including requirements for notice and public hearing. After final adoption and approval, a master plan organized on a planning area basis may be amended only for the entire area encompassed by the plan. A master plan may contain a time schedule estimating the completion of development of various phases or portions thereof. The adoption and approval of a master plan shall not give rise to a presumption that a change has occurred in the condition or character of the neighborhood in which any piece, parcel, or tract of land is located, nor shall such adoption and approval, in and of itself, warrant the approval of any application for reclassification.

(c) The term "Comprehensive Zoning Map" shall mean an ordinance in the form of a map which, by its provisions, assigns to each particular piece, parcel, or tract of land contained within its boundaries a particular zoning classification. Such map may not be adopted for an area smaller than a planning area, as that term is used in the definition herein of master plan.

(d) The term "Zoning Map Amendment" shall mean a reclassification from one zoning category or sub-category established by the text of the zoning ordinance, to another zoning category or sub-category so established, of any piece, parcel, or tract of land which is smaller than a planning area, as that term is used in the definition herein of master plan.

(e) Any "Person of Record" shall include the applicant for a zoning map amendment or special exception to a zoning regulation, or any municipality, taxpayer or association of taxpayers in Prince George's County who appears in a zoning case in person, in writing, or by counsel at any time prior to the final decision therein.

(f) The term "Zoning Case" shall mean any application or consideration of a zoning map amendment or special exception to a zoning regulation.

Section 702. **INITIATION OF MASTER PLANS.** The County Executive, by executive order, or the Council, by legislative act, may direct the initiation of a master plan to the extent that funds are available.

Section 703. **APPROVAL OF PROPOSED MASTER PLANS AND THE GENERAL PLAN.** All proposed master plans, and the portion of a proposed general plan applicable to Prince George's County, shall, prior to final approval, be submitted to the County Executive for review. Within sixty calendar days after receipt thereof, the County Executive shall forward the said plan to the Council, together with his recommendations thereon. The Council, in turn, shall, by legislative act, approve, reject, modify or revise said plan, in accordance with the procedures established by law and by Sections 317, 319 and 411 of this Charter.

Section 704. **ADOPTION OF THE TEXT OF A ZONING ORDINANCE AND AMENDMENTS THERETO, AND ADOPTION OF COMPREHENSIVE ZONING MAPS.** The Council shall have the authority to adopt and amend the text of a zoning ordinance, and to adopt comprehensive zoning maps, by legislative act in accordance with the procedures established by law and by Sections 317, 319 and 411 of this Charter.

Section 705. **APPROVAL OF ZONING MAP AMENDMENTS AND SPECIAL EXCEPTIONS.** Subject to the provisions of law and of Sections 706, 707, 708, 709, 710 and 711 of this Charter, the Council shall have the exclusive authority to approve zoning map amendments and to grant special exceptions to zoning regulations, which shall be exempt from the referendum and executive veto provisions of this Charter.

Section 706. **PROCEDURAL REQUIREMENTS IN ZONING CASES.**

(a) Before any zoning map amendment or special exception to a zoning regulation may be granted, there shall be a public hearing thereon before either the Council or a zoning hearing examiner, appointed pursuant to the provisions of this Charter. Said hearing may be held only upon public notice of the time and place of the hearing given at least thirty calendar days immediately preceding the hearing.

(b) All applications in a zoning case, and any amendments thereto, shall contain specific allegations setting forth the precise legal basis for, and the public purpose to be

served by, the granting of the request. All applications must disclose the names and addresses of all persons having a legal or equitable interest in the property which is the subject of a zoning case, including shareholders owning more than five percent of the stock in any corporation having such interest in any land involved in the application, excepting those corporations which are listed and regularly traded on a recognized stock exchange.

(c) All persons who appear to testify in any zoning case shall be sworn, and reasonable cross-examination of witnesses shall be permitted.

(d) Upon request of any person of record, the Council shall employ its subpoena power to compel the attendance of witnesses and the production of relevant books and records. The Council may excuse a witness from attendance upon a showing by the witness that the placing of said witness under subpoena was frivolous or oppressive.

(e) A complete transcript containing all record evidence, including exhibits, shall be prepared in each zoning case. The record in any zoning case shall include a technical staff report, all communications to any public official or agency concerning the application, a current land-use inventory, and specific factual and statistical data from official sources indicating the impact upon public facilities by the requested zoning map amendment or special exception to a zoning regulation.

(f) The burden of proof in any zoning case shall be upon the applicant. After the close of an evidentiary hearing in any zoning case before either the Council or the Zoning Hearing Examiner, as the case may be, said hearing shall not thereafter be reopened for the purpose of adducing additional evidence to supply a defect in proof.

Section 707. **DECISIONS IN ZONING CASES.**

(a) The final decision of the Council in any zoning case shall be based solely upon record evidence, and shall be supported by specific written findings of basic facts and conclusions of law.

(b) The votes or abstentions thereon of all members of the Council must be recorded.

(c) The decision, findings, conclusions and votes of the Council thereon shall be served upon all persons of record.

(d) A majority vote of the full Council shall be necessary to grant any zoning map amendment or special exception to a zoning regulation.

(e) Where any application for a zoning map amendment or special exception to a zoning regulation conflicts with the requirements of a master plan, or with the recommendation of a municipality respecting land within its boundaries, or with the recommendation of any agency charged with making recommendations in zoning cases, said application may be granted only upon the affirmative vote of two-thirds of the full Council.

(f) Applications in zoning cases on which a decision has not been finally rendered within 90 calendar days from the conclusion of the hearing by the Council or from the filing and service of a hearing examiner's decision in cases heard by a hearing examiner, as hereinafter provided, shall automatically be considered to have been denied by the Council.

Section 708. RESTRICTIONS IN ZONING CASES.

(a) No amendment to an application in a zoning case shall be permitted after notice of public hearing is given.

(b) No application for a zoning map amendment or special exception to a zoning regulation may be filed on substantially the same land until two calendar years have elapsed after action, including appellate review, shall have been completed upon any previous application. After two such applications on substantially the same land shall have been acted upon, a period of four calendar years must elapse before another application may be filed.

(c) Staff studies of any agency or commission in the nature of land development plans which have not been subjected to the procedures and requirements for the adoption and approval of a master plan shall not be used as any part of the basis for the approval of applications in zoning cases.

(d) A zoning map amendment may not be approved subject to a condition or qualification which is not uniformly applicable throughout the County to all land in the same zoning classification.

(e) No zoning classification shall be a floating zone.

(f) State and County officials may not appear in a representative capacity on behalf of any private party in any zoning case.

(g) The Council may by law require that, subsequent to the granting of a zoning map amendment, a site plan shall be filed and approved as a prerequisite for the issuance of a building permit. Such law shall contain standards for approval and shall require that notice of the filing of the site plan be given to adjacent property owners and to any municipality in which the land is located and that a public hearing shall be held prior to the approval of the site plan.

Section 709. CONFLICTS OF INTEREST. All public officials participating in the decision on, or the processing of, any application in any zoning case shall file a public statement under oath, not later than July 1 of each year, with the Clerk of the Circuit Court for Prince George's County, disclosing any interest in land located in Prince George's County held by himself or his spouse during the preceding year. As used herein, interest includes both legal and equitable interest and includes the ownership of more than five percent of the stock in any corporation which holds an interest in land in Prince George's County. All public officials participating in the decision on, or the processing of, an application in a zoning case shall annually file copies of their federal and state income tax returns with the Chief Judge of the Seventh Judicial Circuit. Said returns may be disclosed by the Chief Judge to any law enforcement officer as the public interest may require.

Section 710. ZONING HEARING EXAMINER. The Council may, subject to the provisions of Article IX of this Charter, employ one or more hearing examiners to conduct public hearings in zoning cases. An examiner shall be an attorney admitted to practice before the highest court of a state or of the District of Columbia, shall possess judicial temperament, shall have at least five years experience in administrative litigation, and shall demonstrate a knowledge of administrative and zoning law, practice, and procedure by competitive written examination. Said examiners shall be subject to the provisions of Sections 709, 1001 and 1002 of this Charter.

Section 711. **DUTIES OF ZONING HEARING EXAMINER.** In all cases delegated by the Council to a zoning hearing examiner, he shall conduct a full and complete public hearing upon the application in question, subject to all the requirements and restrictions imposed by law upon the Council. He shall be empowered to swear witnesses and to request subpoenas from the Council. After the conclusion of the hearing, he shall prepare and serve upon all persons of record a written decision which shall contain specific findings of basic facts, conclusions of law, and a recommended disposition of the case. Within thirty calendar days after service of the said decision, any person of record may file exceptions to any portion of the decision and may request oral argument thereon before the Council. The Council shall grant such request and shall give at least ten calendar days notice of the time and place of the argument to all persons of record. In the event no exceptions or request for oral argument is filed within thirty calendar days from the service of said decision, the Council may act forthwith upon the application in accordance with Section 707 of this Charter. The Council shall in all cases, decide finally each application by record vote within 90 calendar days after the hearing examiner files his decision, in accordance with Section 707 of this Charter.

Section 712. **PEOPLE'S ZONING COUNSEL.** The County Executive shall appoint one or more attorneys, who are members of the bar of Maryland and are experienced in zoning law and procedure, to serve as People's Zoning Counsel. Their compensation shall be contained in the annual budget, and they shall be provided such clerical and other assistance as may be determined by the annual budget. They shall be subject to the provisions of Sections 709, 1001 and 1002 of this Charter. It shall be the duty of the People's Zoning Counsel to appear at all hearings on zoning cases, whether before the Council or a hearing examiner, for the purposes of protecting the public interest and insuring the compilation of a full and complete record. The People's Zoning Counsel may summon, examine and cross-examine witnesses, introduce documentary evidence into the record, file exceptions, and make such argument to the hearing examiner or the Council as the law and the evidence in the case may warrant.

Section 713. **JUDICIAL REVIEW.** In addition to any person otherwise entitled to judicial review of a final decision of the Council in a zoning case, any person of record shall be entitled to judicial review of said decision without the necessity of pleading or proving any special loss, injury, or grievance. Any person or class of persons entitled to judicial review of a zoning case in the Circuit Court for Prince George's County may appeal a final decision of said Court in such case to the Court of Appeals by filing a timely appeal in accordance with the Maryland Rules of Procedure.

Section 714. **DISTRICT COUNCIL.** During the existence of the Prince George's County District Council of the Maryland-Washington Regional District, said District Council shall be the County Council and shall be subject to all of the restrictions, limitations, and modifications contained in this Charter.

Section 715. **FURTHERING LEGISLATION.** The Council shall adopt and publish rules of procedure pertaining to zoning cases not inconsistent with the provisions of this Article.

APPENDIX E

CHARTER OF BALTIMORE CITY RELATION TO PLANNING AND ZONING

ARTICLE VII

DEPARTMENT OF PLANNING

65. DEPARTMENT OF PLANNING—*Organization.* There shall be a Department of Planning, the head of which shall be the Planning Commission, consisting of nine members, one of whom shall be the Director of Public Works *ex officio*, one of whom shall be the Mayor of the City *ex officio*, and one of whom shall be a member of the City Council *ex officio*, who shall be elected by that body, and six of whom shall be residents of Baltimore City, whose interest in and knowledge of city planning shall be recognized, and who shall be appointed by the Mayor in the manner prescribed by Section 6 of Article IV, and shall hold office as therein provided, except that they shall be appointed for terms of six years, one of them to expire at the end of every year; and provided that, as to one of the two current terms which will expire on December 31, 1967, the immediately subsequent term shall be for five years. The Mayor shall designate one appointed member of the Commission as its Chairman, and may, from time to time, withdraw such designation and designate some other appointed member as Chairman of the Commission. The Mayor may from time to time delegate some other member of the Board of Estimates to attend meetings of the Commission and to vote thereon in his place, and the Director of Public Works may delegate an employee in his Department to attend any meeting of the Commission and to vote in his place. Each of the members of the Commission, excluding those serving *ex officio*, except the member of the City Council, shall receive compensation at the rate of $25.00 for each meeting of the Commission attended, not exceeding $1,250.00 a year, and the Chairman shall receive $3,000.00 per year.

66. DEPARTMENT OF PLANNING—*Meetings and Records.* Regular meetings of the Commission shall be held as the Commission may determine, and special meetings may be held at any time at the call of the Chairman and shall be called by the Chairman upon the written request of three members. The Commission shall adopt rules for the transaction of business. It shall hold hearings at its discretion or upon the written request of any member of the City Council on any particular ordinance or matter pending before the Commission, and the Commission may administer oaths and compel the attendance of witnesses. It shall keep a record of its resolutions, transactions, findings, determinations and decisions, and it shall keep minutes of its proceedings, showing the vote of each member upon each question, all of which shall be filed in the office of the Commission and shall be a public record.

67. DEPARTMENT OF PLANNING—*Staff.* The Commission shall appoint a Director who shall receive such compensation as may be provided in the Ordinance of Estimates. The Director of Planning shall be appointed and hold office without regard to the provisions of the Charter relating to the Classified Civil Service. The Commission shall also appoint such other employees (including part time consultants) for the proper conduct of the office of the Commission, as may be provided for in the Ordinance of Estimates. The Commission in choosing a Director shall endeavor to obtain a person who, by education, experience and professional qualifications shall be most qualified to advance the development and planning of Baltimore City. Part time consultants may be employed only when approved by special resolution of the Board of Estimates fixing the basis thereof and compensation therefor. The Commission shall have reasonable access, through its agents and employees, to the plats and records of all other municipal agencies of the City and, subject to the approval of the Board of Estimates, may require the assistance of any other municipal agency of the City.

68. DEPARTMENT OF PLANNING—*Power to Prepare Plans.* The Commission shall have full power to investigate and study land uses and zoning, and it shall be its duty, as a result of such investigation and study, to formu-

late, review, prepare and amend and keep up to date and in accordance with changing and future needs of the City, as they shall from time to time appear, plans showing generally the proposed physical development of Baltimore City. These plans, after adoption by the Commission as herein provided, shall be known as either the Master Plan or Official Detailed Plans. In the preparation of plans, the Commission shall make careful and comprehensive surveys and studies of the present condition and the anticipated future growth of Baltimore City. The Master Plan and any Official Detailed Plan shall be made for the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of Baltimore City to promote the health, order, security, safety and morals of its inhabitants.

69. DEPARTMENT OF PLANNING—*The Master Plan.* The Master Plan for the proposed physical development of Baltimore City shall consist of maps, plats, charts and such descriptive matter as may be necessary to depict the said Plan, and it shall show generally the proposed physical development of said city, and each map, plat or chart or other descriptive matter shall show one or more elements of the Plan. These maps, plats and charts and descriptive matter shall indicate the plan for the proposed physical development of Baltimore City, and shall show, among other things, the future general location and extent of all public improvements and enterprises, including among other things, the general location and extent of streets, highways, boulevards, viaducts, bridges, subways, tunnels and all uses of land for purposes of public transportation, and also the general location and extent of piers, wharves, docks and bulkheads, and buildings or structures thereon, whether publicly or privately owned or operated, and also the general location and extent of publicly owned places of recreation, such as playgrounds, squares, and parks, and all public buildings and other public property, including school buildings, and all existing and proposed zoning areas or districts, and all public utilities, services and terminals, such as water, gas, electricity, sewerage, telephone, telegraph and transportation, whether privately or publicly owned or operated.

70. DEPARTMENT OF PLANNING—*Adoption of the Master Plan.* The Commission may adopt the Master Plan as a whole by a single resolution, or may, by separate resolutions, adopt several parts of the Master Plan. The adoption of the Master Plan or any part thereof shall be by resolution of the Commission carried by the affirmative vote of not less than six members. Such resolution or resolutions shall refer expressly to the maps, plats, charts, or descriptive matter intended by the Commission to form the whole or part of the Master Plan, and the action taken by the Commission shall be recorded on the maps, plats, charts or descriptive matter by the identifying signature of the Chairman of the Commission and an original copy thereof signed by the Chairman shall be filed with the Department of Legislative Reference.

71. DEPARTMENT OF PLANNING—*Amendment of the Master Plan.* After the adoption of the Master Plan, or any part thereof, by the Commission, the said Plan, or part thereof, may be changed, altered, amended, modified or entirely abandoned only by a resolution of the Commission, carried by the affirmative vote of not less than six members of the Commission or by ordinance adopted by the City Council by the affirmative vote of not less than three-fourths of its members. An original copy of said amendment, duly signed by the Chairman, or by the Mayor if made by ordinance, shall be filed with the Department of Legislative Reference.

72. DEPARTMENT OF PLANNING—*Compliance with the Master Plan.* After the adoption by the Commission of the Master Plan or part thereof, and prior to the adoption of an Official Detailed Plan, no public improvement or enterprise, including, among other things, streets, highways, boulevards, viaducts, bridges, subways, tunnels or other uses of land for purposes of public transportation, and piers, wharves, docks, and bulkheads, and buildings or structures thereon, whether publicly or privately owned or operated, and publicly owned places of recreation, such as playgrounds, squares or parks, and public buildings, including school buildings, and public utilities, services or terminals, including gas, water, electricity, sewerage, telephone, telegraph or transportation, whether privately or

publicly owned or operated, within the scope of said Master Plan, or part thereof applicable thereto, shall be authorized or constructed in Baltimore City unless the location and grade thereof and, in cases of the use of land for purposes of transportation, the width thereof, shall be in conformity with the Master Plan and have been first approved by the Commission.

73. DEPARTMENT OF PLANNING—*Preliminary Detailed Plans.* After the adoption by the Commission of the Master Plan, or part thereof, the Commission may from time to time as occasion may require, prepare preliminary detailed plans, which shall be in general harmony with and conform to the Master Plan. These shall consist of maps, plats and charts showing the exact location of the lines of any proposed street, highway, boulevard, viaduct, bridge, subway, tunnel or any other use of land for the purpose of public transportation, as well as the exact grade and extent thereof, and if existing streets, highways, boulevards, viaducts, bridges, subways, tunnels or any other use of land for purposes of public transportation be affected by said detailed plans, then the existing condition, and the change proposed therein by the detailed plan, shall be shown on said maps, plats and charts. Such maps, plats and charts may also show the exact location of the lines of any proposed pier, wharf, dock or bulkhead, and buildings or structures thereon, whether publicly or privately owned or operated, or of any proposed publicly owned place of recreation, such as a playground, square or park, or the exact site of any proposed public building, including school buildings, or the exact extent of a proposed zoning area or district, or the exact location of any proposed public utility, service or terminal, such as gas, water, electricity, sewerage, telephone, telegraph or transportation, whether privately or publicly owned or operated. Said detailed plans shall show all that is reasonably necessary to supply anyone proposing to use land encompassed within the boundaries of said plan with all pertinent information relative to the proposed plan for the territory involved.

74. DEPARTMENT OF PLANNING—*Official Detailed Plans.* After the preparation of any such preliminary detailed

plan, the Commission, after a public hearing thereon, notice of the time and place of which hearing shall be given by posting notice in the neighborhood of the properties affected and by publication in a newspaper of general circulation in Baltimore City, may adopt such detailed plan by resolution carried by the affirmative vote of not less than six members of the Commission and, thereupon, such detailed plan shall become an Official Detailed Plan for the proposed physical development of Baltimore City, and a copy thereof, duly signed by the Chairman, shall be filed with the Department of Legislative Reference and recorded in the Superior Court.

75. DEPARTMENT OF PLANNING—*Amendment to Official Detailed Plans.* Any Official Detailed Plan may be changed, altered, amended, modified or entirely abandoned by resolution of the Commission carried by the affirmative vote of not less than six members of the Commission after a public hearing thereon before the Commission, or by ordinance passed by the City Council by the affirmative vote of not less than three-fourths of its members. Before the Commission shall hold any such public hearing, it shall give reasonable notice of the time and place of such hearing in the manner provided in Section 74 of this Article VII. An original copy of such amendment, duly signed by the Chairman, or by the Mayor if made by ordinance, shall be filed with the Department of Legislative Reference and recorded in the Superior Court; provided, that minor changes in details of construction may be made with the approval of the Chairman of the Commission or his designated representative. All such changes shall be reported to the Commission at its next meeting and be subject to repeal or amendment by it.

76. DEPARTMENT OF PLANNING—*Effect of Official Detailed Plans.* The adoption of an Official Detailed Plan shall not, however, be deemed the opening or establishment of any street, or the taking of any land for public purposes, but solely as a designation of the location shown thereon for future acquisition for public use pursuant to the law in such cases made and provided. The owner of such land so designated in an Official Detailed Plan may, however,

have such land exempted from all real property taxes thereon if such land is unimproved and if, and so long as, no use thereof is made by the said owner. Such exemption shall be obtained by application of the owner to the Board of Municipal and Zoning Appeals for tax exemption on the ground that the land is designated for future public use.

77. DEPARTMENT OF PLANNING—*Compliance with Official Detailed Plans.* After the adoption by the Commission of an Official Detailed Plan, no public improvement or public enterprise, including, among other things, streets, highways, boulevards, viaducts, bridges, subways, tunnels or other uses of land for the purposes of public transportation, and piers, wharves, docks, and bulkheads, and buildings or structures thereon, whether publicly or privately owned or operated, and publicly owned places of recreation, such as playgrounds, squares or parks, and public buildings, including school buildings, and public utilities, services or terminals, including gas, water, electricity, sewerage, telephone, telegraph or transportation, whether privately or publicly owned or operated, within the scope of such Official Detailed Plan applicable thereto, shall be authorized or constructed in Baltimore City until the Commission has certified that the location, grade and extent thereof comply with and conform to such Official Detailed Plan.

Likewise, in order to preserve the integrity of any Official Detailed Plan after its adoption, any application for a permit made to any department of the City for any building, structure, or improvement of any kind or character whatsoever, shall be referred by the department to whom application is made to the Commission for a study thereof, and if the building, structure or improvement complies with and conforms to an applicable Official Detailed Plan, the Commission shall approve the same, but if the building, structure or improvement does not comply with and conform to any such applicable Official Detailed Plan, then the Commission shall promptly report thereon to the Mayor and to the department to which such application has been made what action, if any, in the opinion of the Commission, looking toward the preservation of such Official Detailed Plan, should be taken by the City.

After the adoption by the Commission of an Official Detailed Plan, the City shall not acquire in any manner whatsoever for public use, or accept any land for such use, within the territory embraced in such Official Detailed Plan, without the acquisition or acceptance being first approved by the Commission.

78. DEPARTMENT OF PLANNING—*Regulation of Subdivisions.* The Commission shall investigate and study the development of subdivisions of land, as herein defined, and shall formulate and publish rules and regulations for the development of such subdivisions which will require that the development plans include adequate provision for all public improvements, enterprises and all public utilities, whether privately or publicly owned or operated; for the proper width, grade and arrangement of streets, and all uses of land for public transportation, and the relation thereof to existing streets; for adequate and convenient open spaces for traffic and the access of fire-fighting apparatus; for proper drainage; and which will require that all such subdivisions and the owners thereof comply in all respects with any applicable Official Detailed Plan.

79. DEPARTMENT OF PLANNING—*Definition of Subdivision Plans.* A subdivision plan, as herein used, shall mean a plan submitted by the owner of not less than one-third of the land included therein showing one or more new streets or parks, or showing the division of a lot, tract or parcel of land into two or more lots, tracts or parcels, or other divisions of land for the purpose, whether immediate or future, of sale or building development.

80. DEPARTMENT OF PLANNING—*Approval of Subdivision Plans.* All plans for such subdivision of land shall be filed for record with the Commission, and no permits shall be issued by any department of the City for any work of any character whatsoever, to be done in such subdivision of land, until the plan thereof shall have been approved by the Commission as in conformity with the rules and regulations formulated and published by the Commission and with any applicable Official Detailed Plan.

In the event the Commission shall fail to approve or disapprove any such subdivision plan within thirty days from the date of submission thereof to the Commission, such plan shall be deemed to have been approved by the Commission; provided, however, that the applicant for the Commission's approval may waive this requirement and consent to an extension of such period.

81. DEPARTMENT OF PLANNING—*Effect of Approval of Subdivision Plans.* After the approval by the Commission of any such subdivision plan, the streets shown thereon shall each have the status of a street shown on an Official Detailed Plan. Every plat showing such a subdivision plan shall be filed among the Land Records of Baltimore City in the Superior Court of Baltimore City and with the Department of Legislative Reference but not until after approval of the Commission and of the Department of Public Works shall have been endorsed thereon.

82. DEPARTMENT OF PLANNING—*Appeals.* Any applicant for a permit, or any department, officer, commission or board of the City, aggrieved by any decision of the Commission, may appeal to the Baltimore City Court in the manner provided by any applicable rule of court and, in the absence of any such applicable rule, by a petition, duly verified, setting forth that such decision is erroneous, in whole or in part, and specifying the grounds of error. Such petition shall be presented to the Court within thirty days after the decision of the Commission.

Upon the presentation of such petition, the Court shall allow an appeal to review such decision of the Commission and shall prescribe the time within which an answer shall be filed and served upon petitioner's attorney. The appeal shall not stay proceedings upon the decision appealed from, but the Court may, on application, and on notice to the Commission and the applicant, and on due cause shown, grant a restraining order.

If, upon the hearing, it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a commissioner

to take evidence and report the same to the Court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. An appeal on questions of law may be taken from the determination of the Baltimore City Court to the Court of Appeals.

83. DEPARTMENT OF PLANNING—*Amendment to Zoning Ordinance.* The Commission shall have full power to investigate and study land uses and zoning in the city, and the relation thereof to public and private development, and shall, from time to time, confer with the Board of Municipal and Zoning Appeals, and, when the Commission deems it necessary, report and submit to the City Council amendments to the Baltimore City Zoning Ordinance. Any such amendment shall be submitted only by resolution, adopted by the affirmative vote of two-thirds of the entire membership of the Commission.

All amendments to the Baltimore City Zoning Ordinance, proposed and introduced into the City Council, may be referred by the City Council to the Commission for a report and recommendation. Such report shall state the nature of the investigation made by the Commission, whether or not hearings were held thereon, and the reasons upon which the conclusions of the Commission are based; it shall also note the number of its members voting for and against the proposed amendment.

84. DEPARTMENT OF PLANNING—*Penalties for Violations.* Any person who shall violate any of the provisions or requirements of Sections 72 to 81 inclusive of this Article VII, shall be guilty of a misdemeanor, and, upon conviction in any Court of competent jurisdiction, shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars, and every day that such violation continues shall be deemed a separate offense.

APPENDIX F

PROVISIONS OF HARFORD COUNTY CHARTER RELATIVE TO PLANNING AND ZONING

ARTICLE VII
PLANNING AND ZONING

Section 701. ADOPTION OF PROPOSED MASTER PLANS. It shall be the function and duty of the Department of Planning and Zoning to prepare and propose master plans from time to time. Such plans may be initiated by order of the County Executive or by legislative act of the Council. All proposed master plans shall be referred to the Planning Advisory Board for its review and recommendations. The Board shall complete its review within ninety days. After review by the Board, the County Executive shall forward all proposed master plans to the Council for legislative action.

Section 702. ELEMENTS OF MASTER PLANS. Master plans adopted by the Council shall serve as a guide to public and private actions and decisions to insure the development of public and private property in appropriate relationships. Elements of the plans may be exercised in words, graphics, or other appropriate form. They shall be interrelated and each element shall describe how it relates to each of the other elements and to the statement of objectives, principles, policies and standards. A plan shall contain as a minimum the following elements:

(a) A statement of objectives, principles, policies and standards which shall serve as a guide for the development and economic and social well-being of the County.

(b) A land use plan element which shall show proposals for the most appropriate and desirable patterns for the general location, character, extent, and interrelationship of the manner in which the community should use its public and private land at specified times as far into the future as is reasonable. Such land use may include, without being limited to, public and private, residential, commercial, industrial, agricultural, and recreational land uses.

(c) A transportation plan element which shall show proposals for the most appropriate and desirable patterns for the general location, character and extent of the channels, routes, and terminals for transportation facilities, and for the circulation of persons and goods at specified times as far into the future as is reasonable. Such channels, routes and terminals may include, without being limited to, all types of highways or streets, railways, waterways, airways, routings for mass transit, and terminals for people, goods, and vehicles related to highways, airways, waterways and railways.

(d) A community facilities plan element which shall

show proposals for the most appropriate and desirable patterns for the general location, character, and extent of public and semi-public buildings, land, and facilities for specified times as far into the future as is reasonable. Such facilities may include, without being limited to, parks and recreation areas, schools and other educational and cultural facilities, libraries, churches, hospitals, social welfare and medical facilities, institutions, fire stations, police stations, jails or other public office or administrative facilities.

(c) The plans may include, without being limited to, any additional elements such as community renewal, housing, flood control, pollution, conservation, natural resources, the general location and extent of public utilities, and other programs which will further advance the purposes of these plans.

Section 703. ADOPTION OF ZONING ORDINANCES AND ZONING MAPS. The Council shall enact laws establishing zoning regulations and comprehensive zoning maps, and these laws may be petitioned to referendum in accordance with Section 229 of this Charter. All decisions of the Council in zoning cases, whether by piecemeal rezoning, special exception, variance, or otherwise, shall be rendered by written decisions of the Council, and these decisions may be appealed to the Circuit Court of Harford County in accordance with Section 709 of this Charter, but may not be petitioned to referendum.

Section 704. PROCEDURAL REQUIREMENTS IN ZONING CASES.

(a) Any application in a zoning case, and any amendment thereto, shall contain specific allegations setting forth the basis for the granting of the request. Any application must disclose the names and addresses of all persons having legal or equitable interest in the property which is the subject of the zoning case, including shareholders owning more than five percent of the stock in a corporation having any interest in any land involved in the application, excepting those corporations which are listed and regularly traded on a recognized stock exchange.

(b) Before any application in a zoning case may be granted, there shall be a public hearing held before the body or the officer having authority to decide the case. Notice of the public hearing shall be published once a week for two consecutive weeks in at least two newspapers published in the County. The second public notice shall be published not less than fourteen days before the hearing.

(c) All testimony received in any zoning case shall be under oath, shall be subject to cross-examination, and shall be recorded.

(d) The Council shall reasonably employ its subpoena power to compel the attendance of witnesses and the production of evidence upon request by any applicant in a zoning case or any other interested person.

(e) The record in all zoning cases shall include the application, all documents or communications sub-

mitted for the consideration of the body or officer hearing the case, the recorded testimony received at the hearing, any reports or communications to or from any public officials or agency concerning the application, and the final decision of the body or officer hearing the case.

(f) The burden of proof in any zoning case shall be upon the applicant.

Section 705. DECISIONS IN ZONING CASES.

(a) The final decision in a Zoning case shall be based solely upon record evidence, and shall be supported by specific written findings of fact and conclusions of law.

(b) The votes or abstentions thereon of all members of the bodies deciding the case must be recorded.

(c) An affirmative vote of at least four members of the Council shall be necessary to decide any zoning case before the Council.

(d) Applications in zoning cases on which a decision has not been finally rendered within ninety calendar days from the conclusion of the hearing by the Council or from the filing and service of a hearing examiner's decision in cases heard by a hearing examiner, as hereinafter provided, shall automatically be considered to have been denied by the Council.

(e) Provisions shall be made for all persons attending every zoning hearing to register and all persons registered shall be notified by mail of the decision in the zoning case.

Section 706. RESTRICTIONS IN ZONING CASES. State and county officials or employees may not appear in a representative capacity on behalf of any private party in any zoning case.

Section 707. CONFLICTS OF INTEREST. All public officials participating in the decision on, or the processing of, any application in a zoning case shall file a public statement under oath, not later than the first day of January of each year, with the Clerk of the Circuit Court for Harford County, disclosing any interest in land located in Harford County held by himself or his spouse during the preceding year. It shall also be the responsibility of said individuals to update said statement within thirty days after acquisition or divestment of interest in land. As used herein interest includes both legal and equitable interest and includes the ownership of more than five percent of the stock of a corporation which holds an interest in land in Harford County. None of the foregoing requirements shall be construed as to waive or supercede any provisions of Section 803 of this Charter, and violations herein shall be punishable under Section 803 (c) of this Charter.

Section 708. ZONING HEARING EXAMINER. The Council may employ one or more hearing examiners. An examiner shall be an attorney admitted to practice before the highest court of a state, and shall demonstrate a knowledge of administrative and zoning law, practice, and procedure. He may not practice law

before any County agency except as may be permitted by law, and he may not represent a client in any zoning case. Examiners shall also be subject to the provisions of Sections 707, 801, 902 and 903 of this Charter.

Section 709. APPEALS TO CIRCUIT COURT. Any person aggrieved by any final decision in a zoning case shall have the right to appeal that decision to the Circuit Court for Harford County and shall have the further right of appeal to the Court of Appeals of Maryland. The words "person aggrieved" shall be liberally construed to substantially broaden that class of persons, and shall be interpreted to effectuate the general purposes of this Article.

APPENDIX G

PROVISIONS OF ANNE ARUNDEL COUNTY CHARTER RELATIVE TO PLANNING AND ZONING

G. THE OFFICE OF PLANNING AND ZONING.

Section 530. ORGANIZATION OF OFFICE. The Office of Planning and Zoning shall be administered by a Planning and Zoning Officer appointed by the County Executive, and he shall be a trained planner of wide and varied experience in the fields of planning and zoning, at least five years of which shall have involved a position of administrative leadership and responsibility.

Section 531. DUTIES OF THE OFFICE. The Office of Planning and Zoning shall be charged with the responsibility and duty of planning for the physical development and growth of the County, including the preparation and revision of a Master Plan therefor and the preparation and revision from time to time of rules and regulations governing subdivisions. It shall also be responsible for the preparation, administration and enforcement of a zoning map and of zoning rules and regulations which shall constitute a zoning code. All plans and maps and all rules and regulations hereafter adopted, amended or repealed by the Planning and Zoning Officer shall, prior to taking effect as law, be approved by ordinance of the County Council.

Section 532. THE PLANNING ADVISORY BOARD. There shall be a Planning Advisory Board consisting of five qualified voters appointed by the County Executive for terms coterminous with his or until their successors shall qualify. Members of the Board shall receive no compensation for their services except reasonable and necessary expenses as may be provided in the budget. Vacancies shall be filled in the manner of original appointment. The County Executive shall designate a member as Chairman.

Section 533. DUTIES AND FUNCTIONS OF THE PLANNING ADVISOTY BOARD.

(a) MEETINGS AND RULES OF PROCEDURE. The Planning Advisory Board shall hold at least ten regular monthly meetings each year, but special meetings may be held at anytime, at the call of the Chairman. The Planning Advisory Board shall adopt rules for the transaction of its business. It shall hold hearings at its discretion or upon written request of the County Executive or on resolution of the County Council on any matter pending before the Board. It shall keep a record of its resolutions, transactions, findings, determinations and decisions and it shall keep minutes of its proceedings all of which shall be filed in the Office of Planning and Zoning and shall be public record.

(b) ADVISORY RECOMMENDATIONS AND BUDGET FUNCTIONS. The Planning Advisory Board shall make advisory recommendations to the Planning and Zoning Officer and the County Council relating to the Master Plan, the zoning maps and rules and regulations relating to zoning. At such times as the Director of Administration shall fix, the Planning Advisory Board shall consider an itemized list of capital projects, or capital improvement program, which the various agencies of the County government propose to undertake in the ensuing fiscal year and the next succeeding five fiscal years thereafter. After consideration by the Planning Advisory Board, the Planning and Zoning Officer shall transmit to the Budget Officer with his recommendations a list of projects recommended by said Board to be undertaken in the periods aforesaid and its estimate of the cost thereof. The County Executive, at his discretion, or the County Council, by resolution, may provide for reference to the Board, for review and recommendations, of any matter related to the Board's functions and duties.

(c) AMENDMENT OF CAPITAL PROJECTS AFTER ADOPTION OF BUDGET. In accordance with Section 716 of this Charter, the Planning Advisory Board shall consider and transmit its recommendation forthwith to the County Executive concerning amendments to the capital budget for any fiscal year. Such recommendation shall be advisory only.

H. OFFICE TO ZONING HEARINGS.

Section 534. ORGANIZATION OF OFFICE. The Office of Zoning Hearings shall be administered by the Zoning Hearing Officer, who shall hold the delegated power conferred on him by this Charter. He shall be appointed by the County Executive solely with regard to his qualifications for the duties of his office and shall have such training or experience as will qualify him to conduct quasi-judicial hearings on zoning matters. He shall be responsible to the County Executive.

Section 535. GENERAL POWERS AND DUTIES.

(a) DELEGATION OF POWER TO ZONING HEARING OFFICER FOR RECLASSIFICATION OF PROPERTY. The Zoning Hearing Officer shall be charged with the responsibility and duty of conducting public hearings on a petition filed for a change in or reclassification of the use to which a particular piece of property is subject according to the appropriate zoning map in effect at the time. He shall grant or deny such reclassification in accordance with appropriate zoning regulations, but no reclassification shall be granted by the Zoning Hearing Officer except on the basis of an affirmative finding that there was a mistake in the zoning map or that the character of the neighborhood has changed to such an extent that the zoning map should be changed.

(b) OTHER AUTHORITY OF ZONING HEARING OFFICER. Subject to appropriate principles, standards, rules, conditions and safeguards set forth therein, the Zoning Hearing Officer may grant variances from and make special exceptions to the zoning laws, regulations, ordinances or resolutions. At the operative date of this Article all petitions for variances and special exceptions pending before the Board of Appeals shall be heard by the Zoning Hearing Officer, and the Board of Appeals shall on that date be abolished.

(c) ORDERS AND NOTIFICATION. All orders of the Zoning Hearing Officer shall be in writing setting forth the reason therefor; and a copy thereof shall be furnished to all parties or their attorneys of record.

(d) ORDERS FINAL UNLESS APPEALED. In all cases, the order of the Zoning Hearing Officer shall be final unless further appeal be taken therefrom to the County Board of Appeals.

Section 536. APPEALS FROM ORDERS OF THE ZONING HEARING OFFICER. Within thirty days after a decision of the Zoning Hearing Officer is rendered, any person or persons, jointly or severally, or any taxpayer or any official, office, department, corporation, board, or bureau of Anne Arundel County aggrieved by any decision of the Zoning Hearing Officer shall have the right to appeal therefrom to the County Board of Appeals.

APPENDIX H

PROVISIONS OF HOWARD COUNTY CHARTER RELATIVE TO PLANNING AND ZONING

Section 406. THE OFFICE OF PLANNING AND ZONING.

(a) THE DIRECTOR OF PLANNING. The Office of Planning and Zoning shall be administered by the Director of Planning, who shall be appointed by the Executive. He shall be a trained planner with wide and varied experience in the fields of planning and zoning, and for at least five years he shall have been involved in a position of administrative leadership and responsibility.

(b) DUTIES AND FUNCTIONS OF THE OFFICE. The Office of Planning and Zoning shall be charged with the duty and responsibility of comprehensive planning for the growth and development of the County. Such duty and responsibility shall include, but not be limited to, the following functions:

1. The preparation and revision of a Master Plan for land use and land conservation which shall be prepared in accordance with general guidelines promulgated by the Planning Board at least once every five years.

2. The preparation of comprehensive multi-year development plans for public services including transportation, public facilities, water, sewerage, and park lands.

3. The preparation and revision from time to time of rules and regulations governing the subdivision of land and land development.

4. The submission of all of the foregoing plans, zoning maps, and rules and regulations to the Planning Board for its recommendations prior to public hearing by the Council.

5. The preparation and submission of a zoning map and of zoning rules and regulations to the Council.

6. The administration and enforcement of rules and regulations governing the subdivision of land and land development.

7. The administration and enforcement of the zoning code.

8. The receipt, administrative processing, and the preparation of findings on all applications and petitions for reclassifications of zoning districts and amendments to the zoning map.

9. The submission of its findings on all applications and petitions for reclassifications of zoning districts and amendments to the zoning map to the Planning Board for its recommendations prior to public hearing by the Council.

10. The receipt, administrative processing, and the preparation of findings on all other zoning applications and petitions not covered by Section 406(b)8 above.

11. The submission of its findings on all other zoning applications and petitions covered by Section 406(b)10 above to the Planning Board for its recommendations prior to action thereon by the Board of Appeals.

12. Providing assistance to the Board of Education in the preparation of comprehensive multi-year school site and development plans.

13. Provided that nothing herein contained shall be construed as affecting the adoption or change in the General Plan, zoning map, rules, regulations or ordinances unless approved by the Council, after public notice and hearing.

Section 407. THE PLANNING BOARD.

(a) COMPOSITION OF THE BOARD. The Planning Board shall consist of five members. Board members shall be appointed by the Executive, subject to confirmation by the Council and shall serve for overlapping terms of five years from the first day of May of the year of their appointments, or until their successors are appointed. Vacancies, except those at the expiration of a term, shall be filled in the same manner as original appointment and for the unexpired term. Members of the Board shall receive no compensation for their services except reasonable and necessary expenses as may be provided in the budget. The Board shall annually select a Chairman and a Vice Chairman from its membership. The Director of Planning shall serve as Executive Secretary to the Board and shall attend all meetings of the Board.

(b) MEETINGS AND RULES OF PROCEDURE. The Planning Board shall hold regular monthly meetings. Special meetings may be held at any time, at the call of the Chairman. The Planning Board shall adopt rules for the transaction of its business. It shall keep a record of its resolutions, transactions, findings, determinations and decisions and it shall keep minutes of its proceedings, all of which shall be filed in the Office of Planning and Zoning and shall be public record. With the approval of the Council, the Board may retain such legal counsel or consultants as may be necessary to carry out its functions and duties.

(c) RECOMMENDATIONS ON PLANNING AND ZONING. The Planning Board shall make recommendations to the Council on all matters relating to the comprehensive planning and zoning of the County, the adoption of rules and regulations, any amendments thereto, and amendments to the zoning map, in accordance with procedures set forth in Section 406(b) above. Said recommendation shall be made within a reasonable period of time, but in any event no more than forty-five days from the date that the proposal or application shall have been received by the Office of Planning and Zoning unless a longer period of time is allowed by the Council.

(d) RECOMMENDATIONS ON CAPITAL PROGRAMS AND CAPITAL BUDGETS. The Planning Board shall consider an itemized list of capital projects, or capital program, which the various agencies of the County government propose to undertake in the ensuing fiscal year and the next succeeding five fiscal years thereafter. The itemized list of capital projects, or capital program, from all County agencies, shall be submitted to the Board not less than four months prior to the beginning of each fiscal year. After consideration by the Planning Board, the Director of Planning shall transmit to the Budget Officer, three months prior to the beginning of each fiscal year, a capital program recommended by said Board to be undertaken in the periods aforesaid together with its estimate of the cost thereof. The impact of any zoning reclassifications during the past year shall be reflected in the capital program.

(e) OTHER RECOMMENDATIONS. The Executive, at his discretion, or the Council, by resolution, may provide for reference to the Planning Board, for its recommendations, any matter related to the general duties and functions of the Board.

(f) MASTER PLAN GUIDELINES. At least once every five years the Planning Board shall prepare general guidelines to be used by the Office of Planning and Zoning in the preparation and/or the revision of a Master Plan for land use and land conservation.

(g) PUBLIC HEARINGS. Prior to making recommendations to the Council, as set forth in Section 407(c) above, concerning adoption of the Master Plan and any development plan, the Planning Board shall hold at least one public hearing thereon at which interested persons shall be afforded a reasonable opportunity to be heard. Notice of the time and place of such hearing shall be published, at least thirty days prior to the hearing, at least twice in two newspapers of general circulation in the County. In addition, the Board shall hold hearings at its discretion or upon written request of the Executive or on resolution of the Council on any matter pending before the Board.

(h) INITIATION OF STUDIES. The Planning Board may initiate studies related to the general duties and functions of the Board. For the purpose of conducting such studies, the Board shall have the assistance of the staff of the Office of Planning and Zoning to the extent budgeted for.

APPENDIX I

BALTIMORE COUNTY CHARTER PROVISIONS RELATING TO PLANNING AND ZONING

F. *Office of Planning and Zoning.*

Section 522. *Organization of Office.* The Office of Planning and Zoning shall be composed of a Director of Planning, a Planning Board, a Zoning Commissioner and Deputy Zoning Commissioner. The Director of Planning, the Zoning Commissioner and Deputy Zoning Commissioner shall be appointed by the County Administrative Officer, subject to confirmation by the County Executive. The members of the Planning Board shall be appointed by the County Executive. Unless and until otherwise provided by legislative act of the County Council in accordance with Section 524 of this Article, the Director of Planning, the Planning Board, the Zoning Commissioner and Deputy Zoning Commissioner shall have and perform such duties as are provided by law in effect at the time of the adoption of this Charter.

Section 523. *Duties of the Office.* The Office of Planning and Zoning shall be charged with the responsibility and duty of planning for the future development and growth of the County, including the preparation and revision of a Master Plan and the preparation and revision from time to time of rules and regulations governing subdivisions. It shall also be responsible for the preparation and administration of a zoning map and of zoning rules and regulations which shall constitute a zoning code. All plans and maps and all rules and regulations hereafter adopted, amended or repealed by the Office of Planning and Zoning, or any board, commission or officer thereof, shall, prior to

taking effect as law, be approved by ordinance of the County Council. All reclassifications and all orders of the Zoning Commissioner may be appealed in the manner provided in Article VI of this Charter and not otherwise.

Section 524. *Reorganization of Office of Planning and Zoning.* To the extent hereafter permitted by law, the County Council shall have the power by legislative act to reorganize the Office of Planning and Zoning, to provide for and define the duties of a Director of Planning and Zoning as head of said office, to provide for his appointment in the same manner as the heads of other offices and departments in the administrative services, to fix and determine the powers, duties and compensation of the Planning Board, to redesignate the Planning Board by some other name so as more clearly to indicate the scope of its duties and functions, to redefine the duties or abolish the office of Deputy Zoning Commissioner, and, in general, to coordinate and centralize the planning and zoning functions of the County in such manner as may be to the best interests of the County and its future development and growth.

Section 602. *Powers and Functions of County Board of Appeals.* The County Board of Appeals shall have and may exercise the following functions and powers, which are hereby severally transferred from the Board of Zoning Appeals, the Board of License Appeals and the County Commissioners:

(a) *Appeals From Orders Relating to Zoning.* The County Board of Appeals shall have and exercise all the functions and powers of the Board of Zoning Appeals of Baltimore County and of the County Board of Appeals described in Article 25A of the Annotated Code of Maryland as such functions and powers may be prescribed from

time to time by law. All references in law to the Board of Zoning Appeals shall be construed to refer to the County Board of Appeals created by this Article. As soon as the County Board of Appeals has been duly constituted by the appointment and qualification of its members as herein provided, the Board of Zoning Appeals of Baltimore County shall cease to exist. All cases pending before the Board of Zoning Appeals at such time and all cases subsequently arising which otherwise would have been subject to its jurisdiction shall be heard by the County Board of Appeals. In all cases, the order of the County Board of Appeals shall be final unless an appeal be taken therefrom in the manner provided in Section 604 of this Article.

Section 705. *Formulation of Capital Budget and Capital Program.*

(a) *Submission of Data for Referendum.* In each year of a general election in the County, the County Executive shall cause to be placed on the ballot for referendum all questions relating to the issuance of bonds or other evidences of indebtedness as may require the approval of the voters of the County as provided in Section 718 of this Article. Such questions shall be determined as follows:

(1) At such time or times as the County Administrative Officer may direct, the Director of Planning shall transmit to the Director of the Budget the recommendations of the Planning Board for borrowing for capital projects to be undertaken in the next ensuing two fiscal years and of a character requiring authorization by referendum.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 73-514

PRINCE GEORGE'S COUNTY, MARYLAND,
Petitioner,

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION,
Respondent.

BRIEF IN OPPOSITION OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION,
Respondent.

BRIEF IN OPPOSITION OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

The undersigned attorneys, on behalf of Respondent Maryland-National Capital Park and Planning Commission, Appellees below in Case No. 269, September Term, 1972, of the Court of Appeals of Maryland oppose the Petition for a Writ of Certiorari to review the final judgment and decision of the Court of Appeals of Maryland in said case.

OPINION BELOW

The opinion of the Maryland Court is reported at 306 A.2d 223 (advance sheets).

JURISDICTION

This Honorable Court has jurisdiction under 28 USC § 1257(3) to review the final judgment of the Court below on Certiorari.

QUESTION PRESENTED

(i) Whether the Federal question alleged to exist in this case, 1) has been presented in a proper and timely manner to the court of original jurisdiction and to the Maryland Appellate Court, 2) has been preserved by the presentation of evidence in the Court of original jurisdiction and preserved in the Maryland Appellate Court, 3) has been ruled on by the Court of original jurisdiction and by the Maryland Appellate Court so as to entitle Petitioner to invoke this Court's jurisdiction?

(ii) Whether the judgment of the Maryland Court rests independently on adequate State grounds thereby disentitling the petition for review?

STATEMENT OF THE CASE

The petitioner did not comply with Rule 23(f) of the Supreme Court Rules by stating clearly, a) the stage in the proceedings in the Court of first instance and in the Appellate Court, at which, and the manner in which, the Federal question sought to be reviewed was raised, b) the method of raising them, and c) the way in which they were passed upon by the Court, with pertinent quotations of specific portions of the record as will show that the Federal question was timely and properly raised so as to give the U.S. Supreme Court jurisdiction to review the judgment on Writ of Certiorari.

If the Petitioner sets out these facts in detail as required by the rules, the grounds for Certiorari would

not be present and the writ would not be granted; to avert such a result a sweeping statement was made on page 11 of the petition that the question was argued extensively in the Circuit Court and in the brief and argument before the Appellate Court. This brief is filed to bring the facts relating to the Petitioners failure to raise and preserve the alleged Federal question to the attention of this Honorable Court and to thereby oppose the Grant of Certiorari.

The Respondent adopts the factual portions of the Petitioner's statement of the case for the purpose of this brief, but reserves the right to set out a Respondent's Statement of Facts, and denies the inferences made by the Petitioner from those facts. The record in this case clearly establishes that the Petitioner in the Petition for Certiorari (page 11) made an incorrect and misleading statement, to wit:

> "Petitioner had argued extensively to the Chancellor in the Prince George's County Circuit Court that his ruling deprived the citizens and voters of the County of the equal protection of the laws, as guaranteed by the Fourteenth Amendment, in that they were effectively precluded from exercising direct elective input, through the initiative and referendum, in crucial matters involving planning and zoning, while voters of other Maryland chartered counties were so entitled. Petitioners also argued that there was no rational foundation for such an invidious and discriminatory classification."

Respondent submits that Petitioners Answer filed in response to the original Bill of Complaint fails to allege the Federal issue now complained of and that the Federal question was not an issue during the trial of the original lawsuit. The transcript of the Prince George's

County Circuit Court hearing will reveal that Petitioners offered no evidence and did not argue the alleged Federal question and consequently the original Circuit Court Opinion of July 6, 1972 did not mention or consider the Federal issue. The Prince George's County Circuit Court in its Supplemental Opinion of August 3, 1972, filed in response to Prince George's County's Petition For Rehearing And For Clarification Of The Opinion made the following observations on the alleged Federal question, which throws light on the manner in which this contention was presented:

> "14. The Defendant's Fourteenth proposition requests the Court to rule upon a question involving the validity of Section 2 of Chapter 614 of the Acts of 1959 in the light of the Fourteenth Amendment to the United States Constitution. This matter was not heretofore covered in depth and no evidence was offered, that the Court can recollect, bearing on it. Further, it would seem that this matter was abandoned by the County in argument upon the Petition for Rehearing as the Court's notes taken at that time fail to show any consideration of this matter. In any event, the Court does not feel justified in deciding this matter on the present state of the record, and we decline to make any finding with respect thereto."

The Petitioner further states on page 11 of the Petition that:

> "The same argument was made to the Court of Appeals by brief and oral argument, and was renewed in a post-decision Motion for Reargument and Reconsideration.

This statement is also incorrect and misleading. In the Maryland Court of Appeals the Petitioner's Brief raised thirteen contentions. None of them presented a Federal question. The Court of Appeals considered

each point, answered each point, and rested its decision solely on Maryland Law. The Appellant's Brief did not contain any references to the Federal question now alleged to be violated.

In the Petitioner's Reply Brief before the Maryland Court of Appeals the Petitioner for the first time on Appeal raised the Federal question on the basis of which certiorari is now sought to be obtained. Appellee Maryland-National Capital Park and Planning Commission, quoting Rule 885 of the Maryland Rules of Procedure, filed a Motion to Strike Portions of the Reply Brief on the ground that the argument on the Federal constitutional issue was not argued or presented in the Circuit Court and that the intent and purpose of the reply brief would be defeated if new points are raised in the Court of Appeals by way of a Reply Brief. In addition, during oral argument to the Maryland Court of Appeals at no time did Petitioner mention or argue the Federal question to the Court.

The Maryland Court of Appeals in its Opinion (306 A.2d 223-237) considered only the 13 contentions raised by the Prince George's County in its original Brief answered each point and rested its decision solely on Maryland Law.

Prince George's County filed a Motion For Reargument And Modification in the Court of Appeals, in which the argument based upon denial of equal protection to the citizens of Prince George's County was raised for the second time. This Motion was denied and the adjudication and decision by the Maryland Court of Appeals became final. The State Court's decision was based entirely on Maryland Law and the Federal question alleged to exist in this case was not adjudicated

or considered by either the Prince George's County Circuit Court or the Maryland Court of Appeals.

SUMMARY OF ARGUMENT

The Petitioner Prince George's County did not raise the Federal constitutional question, allegedly involved in this case, in a proper and timely manner at the first instance in the Court of original jurisdiction. The Petitioner did not present evidence or argument to the Circuit Court or Appellate Court in order to preserve the question throughout the entire proceedings. The matter was adjudicated by the State Courts so as to enable a review of the State Court's decision in this Honorable Court by invoking certiorari jurisdiction. The decision of the Court below is solely and entirely grounded on application of State law and hence it is inappropriate to invoke the certiorari jurisdiction of this Honorable Court to review the decision. Moreover the grant of certiorari being discretionary with this Honorable Court, the Petitioner not having stated truly and honestly, the original failure to raise the Federal question in the Courts below and the belated stage at which it was raised, disentitled itself to the exercise of discretion in its favor. Page 11 of the Petition reads as though the Petitioner is deprived of the right to raise a Federal question by the State Court because of a lack of sympathy and appreciation of the equal protection doctrine, which does not reflect the true facts of the case.

ARGUMENT

I. Whether the Federal Question Alleged To Exist in This Case, 1) Has Been Presented in a Proper and Timely Manner to the Court of Original Jurisdiction and to the Appellate Court, 2) Has Been Preserved by the Presentation of Evidence in the Court of Original Jurisdiction and Preserved in the Appellate Court, 3) Has Been Ruled on by the Court of Original Jurisdiction and by the Appellate Court So as To Entitle Petitioner To Invoke This Court's Jurisdiction

The Petitioner's statement in the petition for certiorari that the Federal question was "argued extensively to the Chancellor in the Circuit Court that his ruling deprived the citizens and voters of the County of the equal protection of laws as guaranteed by the Fourteenth Amendment" cannnot be taken to be true in the face of the express statement in the Chancellor's Supplemental Opinion of August 3, 1972, that this matter was "abandoned by the County in argument upon the petition for rehearing as the Court's notes taken at that time fail to show any consideration of this matter." If the County felt that this statement by the Chancellor was untrue and it had, in fact, been "argued extensively", the proper procedure to follow is indicated by Rule 826(e) of the Maryland Rules of Procedure which requires that "if the difference arises as to whether the record truly discloses what occurred in the Lower Court, the difference shall be submitted to and settled by the Lower Court and the record made to conform to the truth." Since the Petitioner did not avail the procedure prescribed by the rule, the Petitioner must be deemed to have accepted the statement of the Circuit Court as true.

In the Maryland Court of Appeals, the Petitioner similarly did not raise this contention in the Appellate

Brief. It was only in the Reply Brief that the Petitioner (County) raised this question and the Respondent (M-NCPPC) objected to its being raised for the first time in the Reply Brief. Maryland Rules of Procedure § 885, provides that the Maryland Court of Appeals

> "will not ordinarily decide any point or question which does not plainly appear by the record to have been tried and decided by the Lower Court; but where a point or question of law was presented to the Lower Court and a decision of such point or question of law by this Court (Maryland Court of Appeals) is necessary or desirable for the guidance of the Lower Court or to avoid the expense and delay of another appeal to this Court, such point or question of law may be decided by this Court (Maryland Court of Appeals) even though not decided by the Lower Court."

This rule enunciates the longstanding practice in Maryland since the year 1825. *Gordon* v. *State National Bank,* 249 Md. 378, 239 A.2d 915 (1968); *Friedman* v. *Clark,* 252 Md. 26, 248 A.2d 867 (1969). Under this rule where a question was not presented until it was raised in the Appellant's Reply Brief the Court of Appeals refuses to decide it. *Rose* v. *Paape,* 221 Md. 369, 157 A.2d 618 (1960).

In the instant case, the Circuit Court decided only the 13 issues on which evidence was presented and argued to the Court. The Maryland Court of Appeals in like manner addressed itself to the issues presented in Petitioner's Brief and which were argued to the Court. In the U.S. Supreme Court, the timeliness with which a Federal question is raised, is critical and the question must be raised at the first stage of the proceedings as required by State law. *Edelman* v. *California,* 344 U.S.

357, 73 S.Ct. 293, 97 L.Ed. 387 (1953); *Street* v. *New York,* 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed. 572 (1969). To satisfy the requirement as to the preservation of the question the Petitioner must not only raise the question at the appropriate stage before the Trial Court, but also before the Appellate Court as required by the rules of the State. *Beck* v. *Washington,* 369 U.S. 541, 82 S.Ct. 955, 8 L.Ed. 98 (1969). Raising a Federal question in a petition for rehearing before the State Appellate Court was held to be too late, so as to preclude review by the Supreme Court *vide*: *Herendon* v. *Georgia,* 295 U.S. 441, 55 S.Ct. 794, 79 L.Ed. 1530. For this reason alone the petition for certiorari must be denied.

II. The Judgment of the Court Below Rests Independently on Adequate State Grounds and Thereby Disentitles the Petition for Review.

The Petitioner in the Reply Brief before the Maryland Appellate Court contended as follows:

> "Appellant contends that this Court can resolve the matters at issue herein in its favor short of any constitutional ruling, but if this Court feels that it cannot do so, then the Constitution of the State and of the United States are clear barriers to the results contended for by the Appellee in its brief."

The Court below "short of any constitutional ruling" resolved the matters at issue entirely on the basis of State law; the result, which is not to the liking of the Petitioner, is the cause for this petition for certiorari. The U.S. Supreme Court will not "review judgments of State Courts that rest on adequate and independent grounds"—Justice Jackson in *Herb* v. *Pitcairn,* 324 U.S. 117, 89 L.Ed. 789, 65 S.Ct. 459 (1945); *Scripto, Inc.* v. *Carson,* 362 U.S. 207, 80 S.Ct. 619, 4 L.Ed.2d 660 (1969).

A perusal of the Opinion of the Court below would show that its decision rests on adequate State grounds and there was no mention of any Federal question as either having been raised or presented for adjudication. The petition for certiorari must, therefore, be denied.

The Respondent objects to the inclusion in the Appendix to the Petition for Certiorari of portions of the charters of Baltimore City (Appendix E), Harford County (Appendix F), Anne Arundel County (Appendix G), Howard County (Appendix H), Baltimore County (Appendix I), as being not part of the record in the Court below; however, the present submission of these charters illustrates the failure to introduce evidence on the alleged Federal question in the Circuit Court and the total failure to make a record to preserve the question for review. It follows that without a record there is no Federal issue for review.

CONCLUSION

For the aforesaid reasons the Respondent prays the petition for certiorari may be denied.

Respectfully submitted,

ROBERT H. LEVAN
SANFORD E. WOOL
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Certificate of Service

I hereby certify that on this —— day of October, 1973, three (3) copies of the Brief in Opposition of Petition for Writ of Certiorari to the Court of Appeals of Maryland were mailed to Walter H. Maloney, Jr. and James F. Sharkey, Attorneys for the Petitioner, Court House, Upper Marlboro, Maryland 20870.

I further certify that all parties required to be served have been served.

SANFORD E. WOOL

APPENDIX

A

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

Equity No. D-6078

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

vs.

PRINCE GEORGE'S COUNTY, MARYLAND, ET AL

Opinion and Order

This matter comes before the Court as the result of disagreements between Prince George's County and the Maryland National Capital Park and Planning Commission over the legal interpretation and effect of the Prince George's County Charter upon the powers, duties, personnel and funding of the Commission. The County takes the position that the Commission is a creature of public local law and is subordinate to any provision of the Charter which may directly or indirectly be applied to it or in the alternative that the Charter and the laws creating the Commission are of equal dignity and should be construed to provide "functional interplay between them so as to fully effectuate any express Charter provisions where there is no conflicting provision in the laws creating and governing the Commission".

The Commission on the other hand takes the position that it is a creature of the Legislature, separate, distinct and independent from the County government (of the County within whose territorial boundaries part of its territorial jurisdiction lies) and it is, therefore, not subject to the provisions and requirements of the Prince George's County Charter, notwithstanding the fact that the Charter was adopted subsequent to the laws which as enacted and amended created the Commission and provided guidelines for its operation and financial support.

In order to resolve the legal issues raised by the conflicting interpretations of the various laws utilized by the County Attorney for Prince George's County and the General Counsel to the Commission, each of whom have rendered numerous written opinions and written voluminous Memoranda to their respective principals, upon a substantial portion of which the County at least has acted or indicated its intention to act forthwith, the Commission brought this action seeking injunctive relief and declaratory relief.

The Right of the Commission to Sue and the Existence of a Justiciable Controversy

It would seem that as a preliminary matter the Court ought to consider whether or not the Commission has the power and standing to bring this action. The County takes the position that since it provides the funds with which the Commission operates the activities it carries on in Prince George's County from taxes on Prince George's County property, the Commission is a subordinate agency to the County government and, therefore, has no standing to sue its principal. The County argues that unless it has administrative and financial control over the Commission that the Commission constitutes a separate County government within the County in degradation of the plan of home rule. The County also bolsters its argument in this field with the contention that the laws creating the Commission are really public laws and are, therefore, repealed by the adoption of the Charter. To support the contention that these are public local laws and the matters that they deal with are of particular local concern, the County points to the fact that the Commission acts through separate planning boards for each County and submits separate budgets to each County government and is supported by taxes levied in different amount in each County (which are levied upon property in that County only). The Court is unable to agree with or adopt this line of reasoning. The Act which created the

Commission manifestly dealt with matters of concern to two or more Counties. A single Commission for territory in both Counties was created by the Legislature, as it had the power to do, and all laws providing for such Commissions or agencies are by definition in the Constitution public general laws regardless of where they may be codified. *Constitution of Maryland, Article XI-A, Prince George's County v. City of Laurel, 262 Md. 171. Barranca v. Prince George's County, 264 Md. 562. Bowie v. Washington Suburban Sanitary Commission, 249 Md. 611.* Even if this were not so, it would seem that the provisions of Section 11 of Chapter 780 of the Laws of Maryland, 1959 would be determinative on this point. This Section provides among other things that "the Commission . . . has the right . . . to sue and be sued". We conclude, therefore, that the Commission, as a separate and independent legal entity provided by statute with authority to sue and be sued, has the power to maintain this suit. We further conclude that as a creature of public general law, its power to do so is not curtailed or inhibited by any provision of the Prince George's County Charter.

We are also unable to agree with the County's position that there exists no justiciable controversy. In considering this matter as a preliminary question, the Court found that the County sought to impose upon the officers and employees of the Commission under General Provisions Restriction 1005 of the Charter the provision thereof forbidding them to lobby, testify or furnish information before the Legislature without permission from the County; that the County asserted the right not to levy the specific special taxes provided by statute to support the Commission; that the County asserted the right to determine the number of employees of the Prince George's County Planning Board and to refuse to fund positions for this Board and use these funds to fund similar positions on the County Executive's Administrative Staff. The County asserted the right to di-

rect and control litigation to which the Commission is a party and to abolish the legal staff of the Commission and provide those services through the office of the County Attorney. A more deliberate perusal of the pleadings might disclose other areas of dispute, but we were of the opinion when first considered, and are still of the opinion, that at least those matters go to the very foundation of the functioning of the Commission and constitute a justiciable controversy upon the assertion of the right by the County and an indication on its part that it intends to act forthwith upon the rights asserted. We conclude, therefore, that the exercise by the County of the rights which it asserted could have far-reaching and possibly irrevocable effects upon the functioning of the Commission and that such a state of affairs poses questions ripe for adjudication by a declaratory judgment proceeding.

Questions Presented

The Bill of Complaint enumerates many areas of conflict and dispute upon which declaratory relief is sought and the Court intends at the conclusion of this Opinion to deal with them *seriatim*; however, we think that the basic underlying differences are relatively simple and uncomplicated and can be briefly stated this way:

Do the Charter provisions, which may be directly or indirectly applied to the operations and personnel of the Commission, control or is the law, which creates the Commission and prescribes its composition, territorial jurisdiction, duties and method of financial support, a public general law which is uneffected by the subsequent adoption of the Prince George's County Charter?

Conclusions

We hold that the law which created the Commission is a public general law and that it is uneffected by the subsequent adoption of the Prince George's County Charter. The

law creating the Commission contains in many places language which indicates that the Legislature intended it to exercise the authority conferred upon it without respect to the operation of the local government within whose territorial jurisdiction it is operating. An example of one of these may be found in Chapter 780, Section 57(d)(3), Laws of Maryland, 1959, which says in part:

> "No municipal corporation within . . . the Regional District shall be authorized by means of an amendment to its Charter or otherwise, to exercise any of the powers relating to planning, sub-division control, or zoning now or hereafter granted by this Article to the Commission or the County Commissioners of Prince George's County. . . . . ."

Further to this effect are the provisions of Section 85 of the same Chapter:

> "Effect of State-Wide Zoning Law.
>
> (a) In municipalities.—Within the Regional District, the zoning powers of them vested by Article 66B of the Annotated Code of Maryland in any municipality or council of any municipality within the Regional District shall be construed to be vested exclusively in and may be exercised within their discretion only by the County Council of Montgomery County or the County Commissioners of Prince George's County, each acting respectively as a District Council.
>
> (b) In planning commissions or boards of appeals.—Within the Regional District any power vested by Article 66B of the Annotated Code of Maryland in any plannnig commission or board of appeals shall be construed to be vested exclusively in and may be exercised only by the Commission or the respective Boards of Zoning Appeals created or authorized by this sub-title.

> **(c) This sub-title prevails.—Insofar as the provisions of Article 66B of the Annotated Code of Maryland may be inconsistent with or contrary to the provisions of this sub-title, such provisions of Article 66B shall have no application within the Regional District."**

The County attempts to rely for part of their argument upon the proposition that if home rule is to mean anything, the powers granted by Chapter 614 of the Acts of 1959 dealing with planning and zoning must be held paramount for them. If, however, one reads that Chapter in its entirety, it is apparent that the Legislature foresaw the possibility of conflicts between Chartered Counties exercising "express powers" and the Commission because it provided in Section 2 of that Chapter as follows:

> "Sec. 2. And be it further enacted, that in so far as the provisions of this sub-section may be inconsistent with or contrary to the provisions of the Maryland-Washington Regional District Act, as enacted by Chapter 992 of the Acts of 1943 and any amendments thereto, the provisions of this sub-section shall have no application so long as such District Act is in force and effect and nothing contained herein shall be deemed or construed to affect the validity or operative effect, of said Chapter 992 of the Acts of 1943 as amended, which established City and Regional Planning in Montgomery and Prince George's Counties within the limits of the Maryland-Washington Regional District as said District is now or shall hereafter be defined by Law."

The Court is driven inescapably to the conclusion that the Legislature did not intend nor did it diminish in any way the powers of the Commission by granting to Chartered Counties planning and zoning under the express powers provision of this Chapter and that the adoption of a Charter by Prince George's has no effect whatsoever so far as planning and zoning is concerned upon that portion

of Prince George's County lying within the boundaries of the Regional District. The County cites as authority to the contrary the case of *Dal Maso v. Board of County Commissioners for Prince George's County, No. 272, in the Court of Appeals, September Term, 1971.* We have carefully scrutinized this Opinion and are of the opinion that it is not controlling upon the matters here presented. Since the Court of Appeals concluded that the provisions of the Prince George's County Charter purporting to abolish floating zones were controlling upon the issues there presented, we can only conclude that the property which was the subject of that zoning case was not within the Regional District and it was, therefore, controlled by the Chapter rather than the provisions of the Zoning Ordinance adopted for the portion of Prince George's County lying within the Regional District by the District Council, who are the exclusive zoning authority for the Regional District in Prince George's County and whose zoning ordinance could not have been effected by the adoption of the Charter.

The Court's attention has been called to the case of *Clayman, et al. v. Prince George's County, et al,* now pending as *Case No. 322, in the Court of Appeals, September Term, 1971;* however, that case has not yet been decided so far as the Court knows.

The Court concludes that the fact that the statute creating the Commission provides for appointment of certain of its members by each of the respective County governments does not make those officers County employees nor one so appointed thereafter subject to direct control in his official actions by the respective County governments who have the power to appoint or remove them. Once appointed they become State officers dependent upon the public general law for their official existence and answerable to its provisions or through its provisions for their conduct in office. It follows from this reasoning that the provisions of the Charter regulating County officials or employees are

not applicable to members of the Commission or its employees.

The Court concludes further that the Commission is not an agency which receives or disperses County funds as that terminology is used in the Prince Georger's County Charter. Funds which the Commission receives it receives as a result of provisions of a public general law and such funds, therefore, cannot, we think, be construed as "County funds" for the purpose of bringing the Commission with the auditing requirements of the County Charter.

Finally the Court finds as a fact that the Commission is entitled to declaratory relief and the Court makes the following declarations:

1. The Maryland-Washington District Act as enacted in Chapter 780 in the Laws of Maryland 1959 as amended is a public general law.

2. Prince George's County may not exercise the powers of planning and zoning within the "Regional District" and that provisions of Article 7 of the Prince George's County Charter are not applicable to that portion of Prince George's County lying within the "Regional District."

3. Section 709—Conflicts of Interests—of the Prince George's County Charter does not apply to the members of the Commission or its employees.

4. The Commission and the Prince George's County Planning Board are not "agencies which receive and disburse County funds" within the meaning of that phrase as used in Section 1005 of the Prince George's County Charter and are not subject to the provisions of that Section.

5. The tax provided in Chapter 732, Laws of Maryland, 1970, must be levied by the Prince George's County Council and the proceeds thereof remitted to the Prince George's County Planning Board as provided by law.

6. Prince George's County cannot compel the merger of the legal staff of the Commission with the legal staff of the County, nor can it deduct from funds due the Commission the cost of legal services and provide same in kind through the office of the County Attorney.

7. The Prince George's County Planning Board is not an "agency which receives or disburses County funds" as that terminology is used in Section 313——Office of Audits and Investigations—of the Prince George's County Charter and is, therefore, not subject to the requirements of that Section of the Charter.

8. The Prince George's County Planning Board is not subject to the provisions of Section 501—Supervision and Control—of the Prince George's County Charter.

9. Prince George's County may not by Executive Order effect a transfer of the Commission's staff positions.

10. Taxes levied and collected on behalf of the Commission pursuant to public general law are not "County funds" as that terminology is used in Section 804(b)—Definition of Terms Used in this Article—of the Prince George's County Charter.

11. The Prince George's County Planning Board is not an "agency which disburses or receives County funds" by virtue of the definition of County government as that definition appears in Section 804(a)—Definition of Terms Used in This Article—of the Prince George's County Charter.

12. The Prince George's County Planning Board is not subject to the provision of Section 806—Formulation of Capital Budget and Capital Program—of the Prince George's County Charter.

13. The Prince George's County Planning is not subject to the provisions of Section 807—Formulation of Current expense Budget—of the Prince George's County Charter.

14. Prince George's County must levy and remit to the Prince George's County Planning Board the mandatory *ad valorem* taxes required by the public general law.

15. The Prince George's County Planning Board is not subject to the provisions of Section 1017(m)—Definitions and Rules of Construction—of the Prince George's County Charter.

16. The Prince George's County Council has the authority, jurisdiction and power to levy "discretionary taxes" to be collected on behalf of the Prince George's County Planning Board pursuant to public general law and that such taxes when levied and collected are not "County funds" as that terminology is used in any of the several Sections of the Prince George's County Charter where this term appears.

17. Taxes levied and the proceeds thereof collected, whether they be the mandatory taxes required by the public general law or "discretionary taxes" authorized and permitted by the public general law, may not be included in the Prince George's County general fund.

18. The Interlocutory Injunction granted by Order of the Court dated June 2, 1971 will be made final.

Order

It is thereupon this 6th day of July, 1972, by the Circuit Court for Prince George's County, Maryland, in Equity,

ADJUDGED, ORDERED and DECREED that the Interlocutory Injunction provided by the Court's Order dated June 2, 1971 BE and the same Is hereby made a Final Injunction.

PERRY G. BOWEN, JR.
Judge

B

Supplemental Opinion of August 3, 1972

Subsequent to the filing of the original Opinion in this case on July 6, 1972, the Defendant filed a petition for Rehearing and for Clarification of the Opinion and Modification of Decree, together with a Memorandum of Points and Authorities. This matter was heard in Open Court on July 20, 1972 at which time the Plaintiff appeared and opposed both the Rehearing and the requested Modification of the original Opinion.

The Court points out that the original Opinion, which was entitled Opinion and Order, was not intended as the Final Decree in this case, but only as an Opinion and Interlocutory Order to the extent that it continued the Injunction heretofore entered. It was contemplated, and counsel were advised at the hearing, that they were expected to prepare a Final Decree in accordance with the Court's Opinion and submit it for signature in accordance with the standard equity practice in this jurisdiction.

In its Petition for Rehearing the Defendant listed fourteen (14) matters upon which it requested further clarification or declaration from the Court. It is true, as the Plaintiff argues, that the Defendant has steadfastly resisted the Court assuming jurisdiction in this matter, has contended it is not a justiciable controversy and filed no application for declaratory relief in its own right. Notwithstanding these facts, however, the Court feels that, in the interest of having all possible matters resolved in this case, as opposed to a piecemeal handling in other cases in the future, those points which can be identified and dealt with in this proceeding ought to be disposed of in the interest of the public bodies involved and of the public in general. For this reason, the Court has considered the Defendant's Petition and has concluded to deal with such of the matters raised as have been, we think, fairly raised, argued and covered by the evidence presented.

The Court will take up these questions, therefore, in the order presented in the Petition for Rehearing:

1. The Court concludes that the District Council and its individual members are not proper party Defendants in this case and that they should, therefore, be dismissed.

2. The Defendant contends that the *ad valorem* taxes which admittedly are levied at different rates in different parts of the Regional and Metropolitan District are unconstitutional under Article 15 of the Declaration of Rights of the Maryland Constitution. This Section provides, among other things, "that the General Assembly shall by uniform rules provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied .... by the Counties .... shall be uniform within each class or sub-class ....."

We are unable to agree that the provisions of this Article make unconstitutional the levying of taxes at different rates on land lying in Montgomery County as opposed to land lying in Prince George's County, or upon land lying in one District of Prince George's County as opposed to another District in Prince George's County. The Court of Appeals has held in *Miller v. Wicomico County, 107 Md. 438,* "the Legislature may create separate taxing Districts provided the rate is equal and uniform as to all property within the District". And in *Rogan v. Commissioners of Calvert County, 194 Md. 299,* "the Legislature has power to divide a County into taxing Districts and each County or taxing District can have its own rate of taxation without contravening the provisions of this Article". Both of these cases appear in the annotations to this Article.

For these reasons the Court declares that the taxing scheme embodied in the Act creating the Plaintiff is not unconstitutional under the provisions of Article 15 of the Declaration of Rights to the Constitution of Maryland.

3. The County urges that that portion of the Express Powers Act which is identified as Section 2 of Chapter 614 of the Acts of 1959 and is set out in full on Page 6 in the Court's prior Opinion violates Article XI-A, Section 2 of the Maryland Constitution in that if it is given effect the General Assembly did not treat Chartered Counties on a uniform basis with respect to the powers granted them. The Court can find no requirement in this Article that the Legislature was expressly empowered to make non-uniform provisions for Chartered Counties. The language deemed pertinent by the Court is as follows:

> **"Such express powers granted to the Counties shall not be enlarged or extended by any Charter formed under the provisions of this Article, but such powers may be extended, modified or repealed by the General Assembly."**

If the word "modified" is to receive the definition usually given to it, it would seem that the Legislature has the power to modify its grant of express powers to Chartered Counties. We understand the Court of Appeals reached a similar conclusion in a case involving construction of the Express Powers Act for municipal corporations wherein a similar argument was made by New Carrollton, although we have not had the benefit of this Opinion because it is not yet available here.

The Court, therefore, declares that Section 2, Chapter 614 of the Acts of 1959 is not unconstitutional under the provisions of Article XI-A, Section 2 of the Constitution of Maryland.

4. The County asks the Court to declare that Section 8 of the Schedule of Legislation in the Prince George's County Charter, titled Department of Recreation, repeals and supercedes Chapter 732 of the Acts of 1970 which transferred to and brought under the jurisdiction of the Plain-

tiff all the functions and activities of the Recreation Department in Prince George's County.

We think that the question here presented must be resolved upon the same broad conclusion we reached as the basis for those declarations in the original Opinion, which is, that a public local law cannot repeal or amend or change an inconsistent public general law. This brings us to the question of whether or not Chapter 732 of the Acts of 1970 is a local or public general law. We conclude that it is a public general law. The purpose of Chapter 732 of the Acts of 1970 is stated therein to be:

> "To provide for the transfer, regulation, operation and maintenance of all recreation functions, programs, facilities, and merit system personnel of the Prince George's County Recreation Department by and to The Maryland National Capital Park and Planning Commission, to establish the taxing authority thereto, and *to provide a program of recreation within Prince George's County and the coordination of such program with the Commission's Park functions.*" (Italics for emphasis supplied)

The Court declares, therefore, that Section 8 of the Charter did not repeal or abrogate the provisions of Chapter 732 of the Acts of 1970.

5. The Defendant asserts that the auditing power provided in Chapter 644 of the Acts of 1963 and reenacted and codified as Section 18-1(B)8 by Chapter 898 of the Acts of 1965 applies to the Defendant.

The Court concludes that this is one of those Acts to which the principle of "functional interplay" may be applied and we hold, therefore, that the internal auditor of Prince George's County, or his successor in title and function, "at the request of the President of the Board of County Commissioners", or his successor in title and function, may "examine the financial operations" of the Plain-

tiff in any year in "which it receives funds from the budget of the Board of County Commissioners", or its successors in title and function, "or from the County tax revenues as approved by the Board of County Commissioners", or its successors in title and function. With respect to the character of the funds received by the Plaintiff, the Court reaffirms its declarations Numbered 16 and 17 of the original Opinion.

6. & 7. The Court will consider these propositions of the Defendant together. Basically, they raise the question of whether or not conditional zoning is constitutional and, if so, whether or not the provisions authorizing conditional zoning were repealed by the subsequent enactment of a law requiring uniform regulations in separate use districts.

The Court expresses no opinion upon the constitutionality *vel non* of Chapter 471 of the Acts of 1968 in that it does not recollect that any constitutional objections were offered to this Act during the course of the trial. The attack upon it was based entirely upon the provisions of the Prince George's County Charter. Once again the Court concludes that this Act is a part of the public general law and was not, therefore, effected by the adoption of the Charter.

As an additional ground, the Defendant urges that this Act was repealed by the provisions of Chapter 711 of the Acts of 1969. The Court considers in resolving this question that the reasoning and conclusions of the Court of Appeals in *Prince George's County v. McBride, 263 Md. 235* are controlling. Applying our understanding of that case to the instant question, we conclude that Chapter 471 of the Acts of 1968 was not repealed by Chapter 711 of the Acts of 1969; that the latter Chapter expressly repealed Sections 59-83 of the Code of public local laws of Prince George's County, 1963 Edition and 1967 Supplement. It did not expressly repeal Chapter 59-83G which was enacted as Chapter 471 of the Laws of 1968. We think that both of these Acts can be read together and full effect given to both so

that there is, therefore, no repeal by implication of Chapter 471 of the Acts of 1968 by Chapter 711 of the Acts of 1969.

8., 9. & 10. With respect to Defendant's requests in Nos. 8, 9 and 10, the Court feels that they are fully covered in the original Opinion and declines to further modify its position taken therein.

11. The Defendant urges the Court to declare that the Plaintiff is subject to the control of the Defendant pursuant to and in those areas covered by Chapter 97 of the Acts of 1970. An examination of that Chapter leads the Court to the conclusion that it is Section 231-L upon which the Defendant relies. That Section reads in pertinent part:

> "A .... Commission .... or other agency of the State government which receives more than one-half of its regular annual operating expenses from a political subdivision of this State is not a 'using authority' within the meaning of .... this Article ...."

> "As to any such .... Commission .... or other agency the political sub-division from which it receives more than one-half of its regular annual operating expenses shall hereafter have the responsibility for the purchasing program and all other budget and fiscal matters and any such .... Commission .... or other agency shall be subject to the budget and fiscal procedures and the purchasing laws and regulations of such political sub-division now or hereafter in effect."

"Using authority" is defined in this Act as "every" department, board, commission, bureau, division, institution and agency of this State.

The question of whether or not this Act applies to the Plaintiff herein, once again, we think depends upon how you define the funds supplied to the Plaintiff by virtue of the scheme setup for its financial support in the Act which created it. In the original declarations the Court found that

whether mandated or discretionary, these taxes once levied were not County funds. Applying that reasoning to the resolutions as posed, the Court concludes that if more than half of the Plaintiff's operating budget is derived from such taxes, whether mandated or discretionary, the provisions of Section 231-L of this Act do not apply to it. If more than one-half of the operating funds of the Plaintiff in any given year are supplied from the general funds of Prince George's County, it would seem conversely that the provisions of this Act would apply to it. Upon the evidence adduced in this cause, the Court declares that to this point in time the provisions of Section 231-L of Chapter 97 of the Act of 1970 do not apply to the Plaintiff in such a way as to subject it to the budget and fiscal procedures and the purchasing laws and regulations of Prince George's County.

12. We feel that No. 12 has been disposed of by the preliminary paragraphs of this Supplemental Opinion.

13. We agree with the Defendant that with the filing of the Final Decree in this case the Interlocutory Injunction heretofore entered will no longer be proper and doubtless no longer necessary. It was the intention of the Court in its Order attached to the original Opinion heretofore filed to extend that Interlocutory Injunction only to the point where the Final Decree would be filed and to that point only because there might be some question about the levying of taxes for the current fiscal year. There will be attached to this Opinion an Order modifying the former Order to that extent; it being the clear understanding of all counsel and the Court that the time for appeal would run only from the date the Final Decree, which is required to be prepared and submitted by counsel, is enrolled.

14. The Defendant's fourteenth proposition requests the Court to rule upon a question involving the validity of Section 2 of Chapter 614 of the Acts of 1959 in the light of the Fourteenth Amendment to the United States Constitution. This matter was not heretofore covered in depth

and no evidence was offered, that the Court can recollect, bearing on it. Further, it would seem that this matter was abandoned by the County in argument upon the Petition for Rehearing as the Court's notes taken at that time fail to show any consideration of this matter. In any event, the Court does not feel justified in deciding this matter on the present state of the record, and we decline to make any finding with respect thereto.

Order

It is thereupon this 3rd day of August, 1972, by the Circuit Court for Prince George's County, Maryland,

ADJUDGED, ORDERED and DECREED that that portion of the Court's Order dated July 6, 1972 purporting to make the Interlocutory Injunction provided by the Court's Order dated June 2, 1971 a Final Injunction BE and the same Is hereby continued in full force and effect until such time as a Final Decree is enrolled in this cause.

/s/ PERRY G. BOWEN, JR.
JUDGE

C

MARYLAND RULES OF PROCEDURE

Rule 826. Record on Appeal.

e. Approval of Record by Lower Court Not Necessary.

It shall not be necessary for the record on appeal to be approved by the lower court except as provided in sections c 2 or g of this Rule, but if any difference arises as to whether the record truly discloses what occurred in the

lower court, the difference shall be submitted to and settled by the lower court and the record to conform to the truth.

(C. of A. 10, § 4.)

D

MARYLAND RULES OF PROCEDURE (1972 ED.)

APPEALS TO THE COURT OF APPEALS

SCOPE OF REVIEW

Rule 885. Scope of Review—Limited to Questions Decided by Lower Court.

This Court will not ordinarily decide any point or question which does not plainly appear by the record to have been tried and decided by the lower court; but where a point or question of law was presented to the lower court and a decision of such point or question of law by this Court is necessary or desirable for the guidance of the lower court or to avoid the expense and delay of another appeal to this Court, such point or question of law may be decided by this Court even though not decided by the lower court. Where jurisdiction cannot be conferred on the Court by waiver or consent of the parties, a question as to the jurisdiction of the lower court may be raised and decided in this Court whether or not raised and decided in the lower court.

E

U.S. SUPREME COURT RULES (1967)

Rule 23. The petition for certiorari

1. The petition for writ of certiorari shall contain in the order here indicated—

* * * * *

(f) If review of the judgment of a state court is sought, the statement of the case shall also stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari.

Where the portions of the record relied upon under this subparagraph are voluminous, then they shall be included in an appendix to the petition, which may, if more convenient, be separately presented.